Supreme Court, U. S.
FILED
JUN 29 1978
MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM 1977

**No. 77-1248**

THE ILLINOIS STATE BOARD OF ELECTIONS,
*Defendant-Appellant,*

vs.

SOCIALIST WORKERS PARTY, et al.,
*Plaintiffs-Appellees.*

——Consolidated With——

THE ILLINOIS STATE BOARD OF ELECTIONS,
*Intervening Defendant-Appellant,*

vs.

GERALD ROSE, et al.,
*Plaintiffs-Appellees,*

CHICAGO BOARD OF ELECTION COMMISSIONERS, et al.,
*Defendant-Appellee.*

**On Appeal from the United States Court of Appeals for the Seventh Circuit**

**JURISDICTIONAL STATEMENT FILED MARCH 9, 1978**
**PROBABLE JURISDICTION NOTED ON APRIL 24, 1978**

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IN THE

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OCTOBER TERM 1977

**No. 77-1248**

THE ILLINOIS STATE BOARD OF ELECTIONS,
*Defendant-Appellant,*

vs.

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**——Consolidated With——**

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*Intervening Defendant-Appellant,*

vs.

GERALD ROSE, et al.,
*Plaintiffs-Appellees,*

CHICAGO BOARD OF ELECTION COMMISSIONERS, et al.,
*Defendant-Appellee.*

**On Appeal from the United States Court of Appeals for the Seventh Circuit**

**JURISDICTIONAL STATEMENT FILED MARCH 9, 1978**
**PROBABLE JURISDICTION NOTED ON APRIL 24, 1978**

## APPENDIX

**U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

**LIST OF DOCUMENTS**

Filed or Entered — Item No.
Judge Decker — 77 C 255

| DATE | PROCEEDINGS |
|---|---|
| 1-24-77 | Filed Complaint and twelve copies ..... 1 |
| 1-24-77 | Filed Civil Cover Sheet ..... 2 |
| 1-24-77 | (a) Filed motion for appointment as process server and order and order of appointment by Peter Thierjung ..... 3<br>(b) Enter order dated January 24, 1977: Pursuant to Rule 16 of the Local General Rules, it is ordered that Peter Thieryung is hereby appointed as special process server in the above captioned cause as provided by F.R.C.P. 4(c)—By the Clerk Notices mailed 1-24-77. |
| 2- 8-77 | Filed appearance of Chicago Board of Election Commissioners and that of Ian H. Levin as attorney with Rule 39 Affidavit ..... 4 |
| 2- 8-77 | Filed defendants' motion to strike and dismiss complaint ..... 5 |
| 2-11-77 | Filed plaintiff's notice of motion; emergency motion for preliminary and permanent injunction and other relief..... 6 |
| 2-11-77 | Enter order dated February 11, 1977: Enter order as to number of signatures required to fulfill 5% signature requirement of Ill. Rev. Stat., Ch. 46, Par. 10-2. (DRAFT)—Decker, J. ..... 7 Notices mailed 2-14-77. |



| DATE | PROCEEDINGS |
|---|---|
| 2-15-77 | Filed notice of filing; motion to strike and dismiss plaintiffs' complaint and cause of action against John Marcin, individually and as clerk of the city of Chicago ..... 8 |
| 2-25-77 | Filed defendants' reply to plaintiffs' memorandum in opposition to defendants' motion to dismiss. ..... 9 (filed by Chgo. Bd. of Elec. Comm. & Illinois State Bd. of Elec.) |
| 3- 4-77 | Filed plaintiffs' notice of filing with plaintiffs' response to defendants' reply answering plaintiffs' memorandum in opposition to defendants' motion to dismiss...10 |
| 3-14-77 | Filed memorandum opinion |
| 3-15-77 | Enter order dated 3-14-77; Memorandum opinion filed. Defendants motion to dismiss are denied in accordance with said memorandum opinion. Ordered that defendants, John Hanly, Marie H. Suthers and Howard C. Medley are permanently enjoined from enforcing those portions of Ill. Rev. Stat. ch. 46 Sec. 10-2 and Sec. 10-3 requiring that petitions for offices serving less than the entire state contain more than 25,000 signanatures. Further ordered that the defendants, John Hanly, Marie H. Suthers, and Howard C. Medley, are hereby enjoined to accept as valid those nominating petitions for new political parties and independent candidates in the 1977 Special Mayoral Election which contain at least |

| DATE | PROCEEDINGS |
|---|---|
| | 25,000 signatures if filed within the period as allowed by law. Parties are requested to attend a pretrial conference on Thursday, March 17, 1977 at 9:30 a.m. to discuss the scheduling of a hearing in these cases, and to possibly reach a stipulated agreement for the regulations pertaining to the instant special mayoral election.—DECKER, J.....11 Mailed notices 3-15-77 |
| 3-17-77 | Filed defendant Michael L. Levinson motion to vacate order of permanent injunction.....12 |
| 3-18-77 | Enter order dated 3-17-77, Enter order applying to Special Mayoral Election to be held June 7, 1977, number of signatures requirements. Last date for filing as new political party in Special Mayoral Election shall be April 18, 1977. (DRAFT) Motion of State Ill. to vacate opinion taken under advisement. DECKER, J. .....13 |
| 3-23-77 | Filed plaintiffs offer of proof and request for inj. relief .....14 |
| 4- 4-77 | Filed Defendant State Board of Elections Commissioners offer of proof and request to vacate permanent injunction .....15 |
| | * * * * * |
| 4- 7-77 | Enter order dated 4-6-77 Memorandum Opinion filed. Motion of defendant Ill. State Board of Commissioners to vacate the orders of Commissioners to vacate the orders entered in these cases on March 14, 1977 and March 17, 1977 is hereby denied. (DRAFT) DECKER, J. .....16 |





| DATE | PROCEEDINGS |
|---|---|
| 4-13-77 | Filed defendant Illinois State Board of election's notice of appeal and copies .....17 |
| 4-14-77 | Filed defendants motion for stay of order pending appeal, and copies.....18 |
| 4-14-77 | Filed motion of the Libertarian party of Illinois, et al. to intervene .....19 |
| 4-15-77 | Enter order dated 4-14-77, Motion of Libertarian Party of Ill. for leave to intervene is denied for reasons that a final order of judgment has been rendered by Judge Decker in this cause. CROWLEY, J.....20 |
| 4-22-77 | Filed Appellant's State Board of Elections Designation of record .....21 |
| 5- 9-77 | Filed Certified Copy from U.S.C.A., 7th Circuit; the record on appeal, including transcript, will be filed with the clerk on or before May 25, 1977. (77-1475) .....22 |
| | * * * * * |
| 4- 7-77 | Enter order dated 4-5-77; Order entered denying plaintiffs' request for further injunctive relief. (DRAFT)—Decker, J.....23 |
| 5-19-77 | Clerks file copy of transcript of proceedings had before Judge Decker on February 11, and May 17, 1977 filed by the official court reporter .....24 |

**U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

**LIST OF DOCUMENTS**

Filed or Entered — Item No.
Judge Decker — 77 C 326

| DATE | PROCEEDINGS | |
|---|---|---|
| 1-31-77 | Filed Complaint | 1 |
| 1-31-77 | Filed Civil Cover Sheet | 2 |
| 1-31-77 | Filed Appearances of Attorneys with Affidavits re Rule 39 (3) | 3 |
| 1-31-77 | Filed Motion for Appointment as Process Server and Order of Appointment of Barbara Wolinsky | 4 |
| 2- 8-77 | Filed appearance of all defendants with that of Ian H. Levin as attorney; affidavit re rule 39 | 5 |
| 2- 8-77 | Filed plaintiffs' motion for preliminary and permanent injunction (filed with Judge Decker) | 6 |
| 2- 8-77 | Filed motion to strike and dismiss the complaint (filed with Judge Decker) | 7 |
| 2-10-77 | Enter order dated 2-8-77; Defendant given leave to file motion to dismiss and memorandum in support. Plaintiff given until Feb. 10, 1977 to file its response. Defendant 5 days for reply. Hearing on motion for preliminary and permanent injunction set for Feb. 11, 1977 at 10 a.m.—Decker, J. | 8 |
| 2-14-77 | Enter order dated 2-11-77; Enter order as to number of signatures required to fulfill 5% signature requirement of Ill. Rev. Stat. Ch. 46, Par. 10-2.—DRAFT—DECKER, J. | 9 |



| DATE | PROCEEDINGS | |
|---|---|---|
| 2-11-77 | Filed plaintiffs' motion for leave to file brief in excess of fifteen pages | 10 |
| 2-11-77 | Filed memorandum in opposition to defendants' motion to dismiss and in support of plaintiffs' motion for preliminary and permanent injunction. | |
| 2-14-77 | Enter order dated 2-11-77; Plaintiff given leave to file memorandum in support of motion for preliminary injunction and permanent injunction and in opposition to defendants' motion to dismiss in excess of 15 pages. Defendant 14 days to file answering brief and plaintiff 5 days for reply.—DECKER, J. | 11 |
| 2-22-77 | Filed petition for attorneys' fees by plaintiff | 12 |
| 2-25-77 | Filed defendants' reply to plaintiffs' memorandum in opposition to defendants' motion to dismiss | 13 |
| 3- 4-77 | Filed defendants' answer to petition for attorneys fees | 14 |
| 3- 4-77 | Filed objection and memorandum in opposition to petition for attorneys fees | 15 |
| 3- 4-77 | Filed State Board of Elections (comprised of defendants) response to petition for attorneys' fees | 16 |
| 3-14-77 | Filed Memorandum opinion | |
| 3-15-77 | Enter order dated 3-14-77; Defendants' motions to dismiss are denied in accordance with said memorandum opinion. ORDERED that defendants, John Hanly, Marie H. Suthers and Howard C. Medley | |

DATE PROCEEDINGS

are permanently enjoined from enforcing those portions of Ill. Rev. Stats. ch. 46 Sec. 10-2 and Sec. 10-3 requiring that petitions for offices serving less than the entire state contain more than 25,000 signatures. FURTHER ORDERED that the defendants, John Hanly, Marie H. Suthers and Howard C. Medley, are hereby enjoined to accept as valid those nominating petitions for new political parties and independent candidates in the 1977 Special Mayoral Election which contain at least 25,000 signatures if filed within the period as allowed by law. Parties are requested to attend a pretrial conference on Thursday, March 17, 1977 at 9:30 a.m. to discuss the scheduling of a hearing in these cases, and to possibly reach a stipulated agreement for the regulations pertaining to the instant special mayoral election.
DECKER, J. .....IN CASE 77 C 255 77-1475

3-17-77 Filed Motion to vacate order of permanent injunction .....17

3-18-77 Enter order dated 3-17-77; Enter order applying to Special Mayoral Election to be held June 7, 1977, number of signature requirements. Last date for filing either as new political party or independent in special Mayoral Election shall be April 18, 1977. (DRAFT)—Motion of State of Illinois to vacate court's opinion taken under advisement.—DECKER, J. .....18



DATE PROCEEDINGS

4- 4-77 Filed defendant's State Board of Elections offer of proof and request to vacate permanent injunction ....in 77 C 255 (77-1475)

4- 7-77 Enter order dated 4-6-77; Memorandum opinion filed (in 77 C 255) Motion of defendant Illinois State Board of Election Commissioners to vacate the orders entered in these cases on March 14, 1977 and March 17, 1977 is hereby denied.—DRAFT—DECKER, J. Mailed notices 4-7-77 .....19

4-14-77 Filed defendant Illinois State Board of Elections' notice of appeal and copies (not a party to suit) $5.00 .....20

4-14-77 Filed defendants' motion for stay of order pending appeal, and copies .....21

4-14-77 Filed supplemental petition for attorney fees filed by plaintiff with Judge Decker

4-22-77 Filed designation of record, (complete) .....22

5-10-77 Filed certified copy of order from U.S.C.A.: The record on appeal, including transcript, will be filed with the Clerk on or before May 25, 1977 .....23

5-19-77 Clerks file copy of transcript of proceedings had before Judge Decker on February 11 and May 17, 1977 filed by official court reporter .....FILED IN 77 C 255

## U.S. COURT OF APPEALS
## SEVENTH CIRCUIT — DOCKET

General No. 77-1475
Related Nos.: 77-1476
Pvt. Civil
District: N. Ill., East. Div.
Filed in D. C.: 1-24-77.
Number: 77-C-255.
Notice of Appeal: 4-13-77.
Judge: Bernard M. Decker.

Title: SOCIALIST WORKERS PARTY, et al.,

*Plaintiffs-Appellees,*

vs.

ILLINOIS STATE BOARD OF ELECTIONS,

*Defendant-Appellant.*

| Appearance | Attorney(s) Appellant(s) | Address |
|---|---|---|
| 5-12-77 | Michael Levinson | 100 N. LaSalle St., Rm. 300, Chicago, Ill., 60602 |
| 5-12-77 | John O'Toole | 29 S. LaSalle St., Rm. 830, Chicago, Ill. 60603 |
| 5-12-77 | Ian Levin | 111 W. Wash. St., Rm. 1731, Chicago, Ill. 60602 |
| 6-77-77 | Lance Haddix | 33 N. Dearborn St., Rm. 720, Chicago, Ill., 60602 |
| 6-17-77 | Ronald Reosti | 658 Pallister Ave., Detroit, Mich., 48202 |



Contents of Record: Filed 5-9-77.
Other: Short Record.
Supplemental Records: Date: 5-23-77.
Contents: 2v pldgs., 1v trans.
Withdrawal of Record:

| What Withdrawn | Date | By Whom |
|---|---|---|
| 2v pldgs., 1v trans. | 6- 8-77 | J. J. O'Toole |
| 1v pldgs., 1v. trans. | 8- 5-77 | Jenner & Block |
| 2v pldgs., 1v trans. | 8-10-77 | Jayne Bernard |
| 2v pldgs., 1v trans., 1 tape | 11-29-77 | LC |
| 2v pldgs., 1v trans. | 3-22-78 | LC |

### Summary Of Events

Docketed: 5-9-77.
Docket Fee Paid: 6-6-77.
Appendix: 7-26-77.
Appellant's Brief: 7-11-77.
Appellant's Brief: 7-26-77.
Appellee's Brief: 9-1-77.
Reply Brief: 9-14-77.
Notice of Oral Arg.: 11-14-77.
Date of Oral Arg.: 11-21-77.
Panel: Cummings, Pell, Bauer.
Opinion Date: 12-9-77 per curiam.
Disposition: AFFIRMED IN PART: DISMISSED PART.

| DATE | PROCEEDINGS |
|---|---|
| 5- 9-77 | Entered order adopting the following procedural schedule:<br>(1) appeals to be consolidated<br>(2) appellants to pay both docketing fees |

| DATE | PROCEEDINGS |
|---|---|
| | (3) appellants' counsel to designate period<br>(4) court reporter to file transcript before May 20, 1977<br>(5) record to be filed before May 25, 1977<br>(6) Ill. State Bd. of Elections brief due due June 27, 1977<br>(7) appellees' briefs due July 27, 1977<br>(8) Ill. State Bd. of Elections reply brief due August 10, 1977<br>(9) appeal to be set for oral argument after Sept. 11, 1977. |
| 6-27-77 | Filed O&3c appellant's motion to extend time to file brief, svc (+ affd.) (77-1476) |
| 6-29-77 | Entered order granting appellant's motion to extend time to file brief, up to July 11, 1977; further ordered that appellees' briefs are due Aug. 11, 1977, and appellant's reply brief is due Aug. 25, 1977; appeal will be set for oral argument after Sept. 11, 1977 (77-1476) |
| 7-11-77 | Filed 15c appellant's brief, svc. (77-1476) |
| 7-26-77 | Filed 15c Chicago Board of Election Commissioners responsive brief appendix, svc. |
| 8- 4-77 | Filed O&3c appellee's motion for extension of time to file brief, (77-1476) |
| 8- 8-77 | Entered order extending time for filing appellee's brief (Soc. Work Party) to August 31, 1977; further ordered that appellants' reply brief is due Sept. 14, 1977. (77-1476) |
| 8-11-77 | Filed 15c appellees' brief (Gerald Rose and U. S. Labor Party), svc. ((77-1476) |



| DATE | PROCEEDINGS |
|---|---|
| 8-15-77 | Filed O&3c motion of appellees to file proposed order instanter, plus proposed order. |
| *8-11-77 | Filed O&3c appellees' motion to affirm judgment without oral argument, svc. (77-1476) |
| 8-18-77 | Entered order granting motion of appellees to file proposed order instanter. (77-1476) |
| 8-26-77 | Filed O&2c appellant's objection to deny motion of appellees to affirm judgment without oral argument, svc. (77-1476) |
| 9- 1-77 | Filed 15c appellees' brief (Soc. Workers Party), svc. (77-1476) |
| 9-14-77 | Filed 15c appellants' reply brief, svc. (77-1476) |
| 11-14-77 | Entered order that motion of 8-11-77 filed by appellees to affirm without oral argument, is denied. (77-1476) |
| 11-14-77 | Entered order setting appeal for oral argument, 20 min. per side (77-1476) |
| 11-21-77 | Heard and taken under advisement. (77- 1476) |
| 12- 9-77 | Filed opinion per curiam. (77-1476) |
| 12-12-77 | Filed O&1c appellees' bill of costs in the amount of $137.50, svc. (77-1476) |
| 12- 9-77 | Entered final judgment order, AFFIRMED; district court order of 3-17-77 is DISMISSED; costs to be assessed against appellants. (77-1476) |
| 12- 9-77 | Entered final judgment order: district court order of 3-14-77 is AFFIRMED, and appeal from district court order of 3-17-77 is DISMISSED. (77-1476) (Corrected final judgment) |
| 1- 5-78 | Filed O&1c appellant's notice of appeal to Supreme Court. (77-1476) |

| DATE | PROCEEDINGS |
|---|---|
| 1-10-78 | Filed O&3c appellees' motion (Soc. Work. et al) to file bill of costs instanter, svc; tendered O&1c bill of costs. (77-1476) |
| 1-11-78 | Entered order that appellees' motion to file bill of costs instanter is denied as untimely. (77-1476) |
| 1-25-78 | Entered order that appellees' amended motion to file bill of costs instanter is denied. (77-1476) |
| 3-15-78 | Filed notice of filing petition for cert. on on 3-9-78; Supreme Court No. (77-1476) |
| 5- 1-78 | Filed notice of letter from Supreme Court noting probable jurisdiction on direct appeal. (77-1476). |



## U.S. COURT OF APPEALS
## SEVENTH CIRCUIT — DOCKET

General No. 77-1476
Related Nos. 77-1475.
Pvt. Civil.
District: N. Ill., East. Div.
Number: 77-C-326.
Judge: Decker.
Filed in D. C.: 1-31-77.
Notice of Appeal: 4-14-77.

Title: GERALD ROSE, et al.,

*Plaintiffs-Appellees,*

vs.

ILLINOIS STATE BOARD OF ELECTIONS,

*Defendant-Appellant.*

| Appearance | Attorney(s) | Address |
|---|---|---|
| 5-12-77 | Michael Levinson | 100 N. LaSalle, Rm. 300, Chicago, Ill., 60602 |
| 5-12-77 | Kluczynski, Dore & O'Toole | 29 S. LaSalle St., Rm. 830, Chicago, Ill. 60603 |
| 5-12-77 | William R. Quinlan, Corp. Counsel | 511 City Hall, Chicago, Ill. 60602 |
| 5-12-77 | Daniel Pascale | 511 City Hall, Chicago, Ill., 60602 |
| 5-23-77 | Jeffrey D. Coleman | One IBM Plaza, Chicago, Ill., 60611 |
| 5-23-77 | Jayne W. Barnard | One IBM Plaza, Chicago, Ill., 60611 |

| | | |
|---|---|---|
| 5-23-77 | William H. Luking | One IBM Plaza, Rm. 3100, Chicago, Ill., 60611 |
| 6-17-77 | Lance Haddix | 658 Pallister Ave., Detroit, Mich., 48202 |
| 6-17-77 | Ronald Reposti | 658 Pallister Ave., Detroit, Mich. 48202 |

Supplemental Records:

5-23-77 (same as 77-1475)

Other: Short Record.

| What Withdrawn | Date |
|---|---|
| Same as 77-1475 | 6- 8-77 |
| Same as 77-1475 | 8- 5-77 |
| Same as 77-1475 | 8-10-77 |
| Same as 77-1475 | 11 29-77 |
| Same as 77-1475 | 3-22-78 |

Docketed: 5-9-77.
Docket Fee Paid: 6-6-77.
Appendix: 7-26-77.
Appellant's Brief: 7-11-77.
Appellant's Brief: 7-26-77.
Appellee's Brief: 9-1-77.
Reply Brief: 9-14-77.
Date of Oral Arg.: 11-21-77.
Panel: Cummings, Pell, Bauer.
Opinion Date: 12-9-77 per curiam.
Disposition: AFFIRMED IN PART; DISMISSED PART.

| DATE | PROCEEDINGS |
|---|---|
| 5- 9-77 | Entered order adopting the following procedural schedule:<br>(1) appeals to be consolidated<br>(2) appellants to pay both docketing fees |



| DATE | PROCEEDINGS |
|---|---|
| | (3) appellants' counsel to designate record<br>(4) court reporter to file transcript before May 20, 1977<br>(5) record to be filed before May 25, 1977<br>(6) Ill. State Bd. of Elections brief due June 27, 1977<br>(7) appellees' briefs due July 27, 1977<br>(8) Ill. State Bd. of Elections reply brief due August 10, 1977<br>(9) appeal to be set for oral argument after Sept. 11, 1977. (77-147) |
| 6-27-77 | Filed O&3c appellant's motion to extend time to file brief, svc. + affidavit. (77-1475) |
| 6-29-77 | Entered order granting appellant's motion for extension of time to file brief, up to July 11, 1977; further ordered that appellees' briefs are due Aug. 11, 1977, and appellant's reply brief is due Aug. 25, 1977; appeal is to be set for oral argument after Sept. 1, 1977. (77-1475) |
| 7-11-77 | Filed 15c appellant's brief, svc (77-1475) |
| 7-26-77 | Filed 15c of Chicago Board of Election Commissioners responsive br. & appendix, svc |
| 8- 4-77 | Filed O&3c appellee's motion for extension of time to file brief, svc (771475) |
| 8- 8-77 | Entered order extending time for filing appellee's brief (Soc. Work Party) to August 31, 1977; further ordered that appellants' reply brief is due Sept. 14, 1977. (77-1475) |
| 8-11-77 | Filed 15c appellees' brief (Gerald Rose and U. S. Labor Party), svc. (77-1475). |
| 8-15-77 | Filed O&3c motion of appellees to file proposed order instanter, plus proposed order. |

| DATE | PROCEEDINGS |
|---|---|
| *8-11-77 | Filed O&3c appellees' motion to affirm judgment without oral argument, svc. (77-1475) |
| 8-18-77 | Entered order granting motion of appellees to file proposed order instanter. (77-1475) |
| 8-26-77 | Filed O&2c appellant's objection to deny motion of appellees to affirm judgment without oral argument, svc. (77-1475) |
| 9- 1-77 | Filed 15c appellees' brief (Soc. Workers Party), svc. (77-1475) |
| 9-14-77 | Filed 15c appellants' reply brief, svc (77-1475) |
| 11-14-77 | Entered order that motion of 8-11-77 filed by appellees to affirm without oral arguments, is denied. (77-1475) |
| 11-14-77 | Entered order setting appeal for oral argument, 11-21-77 20 min. per side (77-1475) |
| 11-21-77 | Heard and taken under advisement. (77-1475) |
| 12- 9-77 | Filed per curiam opinion. (77-1475) |
| 12-12-77 | Filed O&1c appellees' bill of costs in the amount of $137.50, svc. |
| *12-9-77 | Entered final judgment order, AFFIRMED; district court order of 3-17-77 is DISMISSED; costs to be assessed against appellants. (77-1475) |
| 12- 9-77 | Entered corrected final judgment order: district court order of 3-14-77 is AFFIRMED, and appeal from district court order of 3-17-77 is DISMISSED. (77-1475) |
| 1- 5-78 | Filed O&1c appellant's notice of appeal to Supreme Court. (77-1475) |



| DATE | PROCEEDINGS |
|---|---|
| 1-10-78 | Filed O&1c appellees' motion (Soc. Work. et al) to file bill of costs instanter, svc; tendered O&1c bill of costs. (77-1475) |
| 1-11-78 | Entered order that appellees' motion to file bill of costs instanter is denied as untimely. (77-1475) |
| 1-25-78 | Entered order that appellees' amended motion to file bill of costs instanter is denied. (77-1475) |
| 3-15-78 | Filed notice of filing petition for cert. on 3-9-78; Supreme Court No. 77-1248. (771475) |
| 5- 1-78 | Failed notice of letter from Supreme Court noting probable jurisdiction on direct appeal. (77-1475) |

IN THE

**UNITED STATES DISTRICT COURT**

FOR THE

**NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

SOCIALIST WORKERS PARTY, MICHAEL TABER, and JOHN DOE,

*Plaintiffs,*

vs.

CHICAGO BOARD OF ELECTIONS COMMISSIONERS, JOHN H. HANLY, MARIE H. SUTHERS, AND HOWARD C. MEDLEY, SR., INDIVIDUALLY AND AS MEMBERS OF THE CHICAGO BOARD OF ELECTIONS, FRANKLIN J. LUNDING, WILLIAM L. HARRIS, DON W. ADAMS, MICHAEL E. LAVELLE, MICHAEL LEVINSON, DAN HAGEN, DELMAR WARD, INDIVIDUALLY AND AS MEMBERS OF THE STATE BOARD OF ELECTIONS, AND JOHN MARCIN, INDIVIDUALLY AND AS CITY CLERK OF CHICAGO,

*Defendants.*

H. Stuart Cunningham, Clerk
United States
District Court

—

No. 77C 255

—

Plaintiffs seek the impaneling of a three-judge district court and declaratory and injunctive relief as further delineated herein.

Received
Jan. 24, 1977



## COMPLAINT

1. This is an action challenging the constitutionality of § 10-2 of the Illinois Election Code (Chapter 46; Ill. Rev. Stat., 1973) as it applies to the special Mayoral Election of the City of Chicago which unconstitutionally denies the right of recognition of the SOCIALIST WORKERS PARTY (hereinafter SWP) as a new political party and denies its candidate the right to appear on the ballot.

**Jurisdiction**

2. Jurisdiction is invoked pursuant to the First and Fourteenth Amendments of the Constitution of the U.S. Title 28, U.S.C. § 1331, 1343, 2201, 2202, 2281, and 2284, as well as Title 42, U.S.C. § 1983. The amount in controversy exceeds $10,000.

**Plaintiffs**

3. Plaintiff SWP, an unincorporated voluntary association having its principal office in Chicago, Illinois, is the Illinois Division of the SOCIALIST WORKERS PARTY, a national political party, and seeks ballot status as a new political party pursuant to §§ 10-2 of the Election Code. It has never run candidates in Illinois who have received more than 5% of the votes cast for the office sought. However, during the campaign for the last mayoral election, the plaintiff secured in excess of 66,000 signatures to qualify for ballot position.

4. Plaintiff, Michael Taber, is a citizen of the United States of America and of the State of Illinois, and a resident of the City of Chicago, Cook County, Illinois, and a duly qualified voter in the State of Illinois, County of Cook and City of Chicago, who seeks to effectively participate in the total election process in the City of Chicago and the

State of Illinois; more particularly, in support of the candidate of the SWP, as a new political party candidate for the Office of Mayor of the City of Chicago in the June 7, 1977 Special Election, and to further associate with persons who would also support the candidacy of the plaintiff, SWP candidate for Mayor of the City of Chicago. Plaintiff, Michael Taber, did not vote in the next preceding primary election to nominate a candidate for the Office of Mayor for the City of Chicago.

5. Plaintiff, John Doe, is a citizen of the United States of America, the State of Illinois, and the County of Cook, residing in the City of Chicago, Illinois, and is a duly qualified voter in the State of Illinois, County of Cook and the City of Chicago. Plaintiff, John Doe did vote in the next preceding primary election for the nomination of a candidate for Mayor of the City of Chicago; but plaintiff John Doe, now seeks to effectively participate in the total election process of the City of Chicago and the State of Illinois, particularly in support of the candidacy of the candidate of the SWP for Mayor of the City of Chicago, and to exercise lawful rights to associate with other persons who seek to support the candidacy of the SWP candidate for Mayor of the City of Chicago, as a new party candidate. This plaintiff, in violation of federal rights under the Fourteenth Amendment to the Constitution of the United States has been unlawfully restricted by the State of Illinois, and by the defendants herein, and the plaintiff has been effectively barred from becoming a signatory on nominating papers, and to otherwise effectively support the SWP candidate, as a new party candidate for Mayor of the City of Chicago.



**Defendants**

6. The defendants are John Marcin, City Clerk of Chicago, John H. Hanly, Marie H. Suthers, and Howard C. Medley, Sr. They compose the Chicago Board of Elections. The defendants, in their collective official capacity as the Chicago Board of Elections, certify *inter alia*, the names of candidates for office to appear in the upcoming special mayoral primary election and special mayoral election (herein after the special election) pursuant to §§ 7-60 and 7-62 of the Election Code.

7. The State Board of Elections, defendant herein, under the provisions of the Constitution and the statutes of the State of Illinois, has responsibility under article 1A, 10-1 through 10-14 for the faithful execution of the laws of the State of Illinois generally regarding elections, and the provisions of Ill. Rev. Stats. Chapter 46, Sec. 10-1 through Sec. 10-14 in particular. Defendants, State Board of Elections of the State of Illinois as such have the responsibility for the implementation of the election laws and procedures of elections in the State of Illinois, and are sued herein in their official and individual capacities.

**Facts**

8. Section 10-2 of the Election Code contains the following provisions for designating candidates, in pertinent part:

> Any group of persons hereafter desiring to form a new political party throughout the State, or in any political subdivision greater than a county and less than the State, shall file with the State Board of Elections a petition, as hereinafter provided; and any such group of persons hereafter desiring to form a new political party, in any county shall file such petition with the county clerk; and any such group of persons hereafter desiring to form a new political party in any

municipality or district less than a county shall file such petition with the clerk or Board of Election Commissioners of such municipality or district, as the case may be. Any such petition for the formation of a new political party throughout the State, or in any such district or political subdivision, as the case may be, shall declare as concisely as may be the intention of the signers thereof to form such new political party in the State, or in such district or political subdivision; shall state in not more than 5 words the name of such party for all offices to be filled in the State, or such district or political subdivision as the case may be, at the next ensuing election then to be held; and, if such new political party shall be formed for the entire State, shall be signed by not less than 25,000 qualified voters: Provided, that no more than 13,000 signatures from the same county may be counted toward the required total of 25,000 signatures. If such new political party shall be formed for any district or political subdivision less than the entire State, such petition shall be signed by qualified voters equaling in number not less than 5% of the number of voters who voted at the next preceding general election in such district or political subdivision in which such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area.

9. In the upcoming June 7, 1977 Special Election, the date for the election, and the election calendar, was set on January 13, 1977 (see attached 1977 Election Calendar). Petitions for a new political party must be filed by April 4, 1977, allowing only 81 days to prepare for and collect the 63,373 signatures required. This compares with 41,403 signatures required in the 1975 Mayoral election, with no time restrictions on the beginning date for petitioning. The plaintiffs claim that the time restrictions for petitioning imposed by the Special Election are burdensome and dis-



criminatory. It would exclude the SWP as a new political party from ballot status in the June 7, 1977 Special Election.

10. These provisions, as construed and applied by the Board of Elections will require it to rule, and it will rule, that the nomination papers to be filed by the plaintiff are invalid because they are not in apparent conformity with the provisions of the clauses and will require it to refuse, and it will refuse, to certify the mayoral candidate of the plaintiffs in the special election.

11. In contrast, for purposes of getting on the ballot and being nominated as a candidate for Mayor of the City of Chicago, defendants and the laws of Illinois as applied to the June 7, 1977 Special Election require the nominees of established political parties to qualify for positions on the ballot for Mayor of the City of Chicago by filing nomination papers containing the signatures of only one-half of one percent of the qualified primary electors of his party in the city.

12. Defendants, and each of them in their official and individual capacities, acting under color of certain statutes of the State of Illinois, have engaged and do now engage in a course of conduct in the implementation of their offices and said statutes of the State of Illinois, as does now deprive and will in the future deprive plaintiffs herein of rights, privileges and immunities secured to them by the Constitution and laws of the United States.

13. The provisions of the Ill. Rev. Stats. Ch. 46, Sec. 10-1 through 10-14, administered by the defendants herein, invidiously discriminate against plaintiff, SWP new party candidate for Mayor of Chicago, in the exercise of this plaintiff's federal rights in the said restrictive election provisions give established political parties and candidates

who are the nominees of said parties, a decided and unconstitutional advantage over new political parties, and over plaintiff, SWP new party candidate for Mayor of the City of Chicago in the 1977 Special Election in his/her efforts to qualify and get on the ballot as a new party candidate for Mayor of the City of Chicago.

14. Although the SWP believes that 10-2, requiring new political parties to collect signatures on nominating petitions at least equal to five (5) percent of the number of votes cast in the preceeding general election, to be in itself burdensome and discriminatory to minority parties, the plaintiffs are only challenging the requirements as they apply to the June 7, 1977 Special Election in the City of Chicago to fill the vacancy of the Hon. Richard J. Daley.

15. Plaintiffs are requesting that because of special circumstances in this special election, most particularly, insufficient notice, and a substantially shorter time period to prepare for and obtain the necessary signatures required to gain ballot status, that a special exception is in order and the plaintiffs should be granted ballot status automatically.

16. The SWP fulfilled petitioning requirements and was certified for the ballot in the April 1, 1975 mayoral election. On January 27, 1975 the SWP filed 66,243 signatures on nominating petitions—(41,463 valid signatures were required).

17. The SWP was the first new political party (or independent candidate) to successfully fulfill these requirements and therefore (1) is knowledgeable concerning the amount of resources, time, preparation, etc., necessary to accomplish this and (2) has shown itself capable of attaining ballot position provided there is sufficient notice and a reasonable time period for fulfilling these requirements. The SWP has also qualified for ballot status in previous state-wide elections.



18. Under usual election procedures, no date is specified for opening of the petitioning period, allowing a new party sufficient time to prepare, plan and collect the necessary number of signatures, as well as to assess the amount of time necessary to accomplish the petitioning. For the April 1, 1975 mayoral election assembling the petitions to put the SWP on the ballot required a period of five (5) months. In the months of September and October, 1974 the following was accomplished: a) selection of the candidate for the office of Mayor of the City of Chicago, b) assembling the necessary staff and volunteers, c) researching and organizing locations for petitioning, d) researching legal requirements for candidates, petitioning, and the correct legal form of the petitions, e) printing of petitions. In the months of November, December of 1974 and January, 1975 the following was accomplished: collection of signatures on nominating petitions and preparation of nominating petitions for submission.

19. The State of Illinois and the defendants herein have no special or valid interest in the premises justifying the imposition upon these plaintiffs, as a new party candidate for the Office of Mayor of the City of Chicago, the unconstitutional burdens and restrictions as are provided for in the statutes and laws of the State of Illinois complained of herein. Rather, plaintiff states that the only purpose for the existence of the aforesaid restrictions and burdens contained in such statutes and laws of the State of Illinois is to provide special advantage and virtual monopoly to established political parties in the State of Illinois, and therefore to inflict unconstitutional deprivations and injury upon the federally protected interests, rights and privileges of this plaintiff to effectively participate in the election processes of the State of Illinois and the City of Chicago.

20. Plaintiffs have moved timely and with dispatch to protect federal rights to effectively participate in the election process of the State of Illinois and the City of Chicago, and to present and qualify as a new party candidate for the Office of Mayor of the City of Chicago.

21. No harm or injury would be caused to the rights of any party or persons should this court remove the unconstitutional burden and restriction imposed upon the plaintiffs by the statutes and laws of the State of Illinois as aforesaid. Further, the name of the SWP candidate for Mayor can properly, lawfull and in timely fashion be placed upon the ballot as a new party candidate for Mayor of the City of Chicago without disrupting the scheduled election for that office, if, and only if, this court acts promptly to protect plaintiffs' federal rights.

WHEREFORE, plaintiffs pray for the entry of an order declaring that the applicable provisions of the election code and enabling ordinances are unconstitutional and void as applied to this Special Election to be held on June 7, 1977; or, in the alternative, declaring those provisions which purport to set forth the requirements for a new party candidate to obtain a position on the ballot for Mayor of the City of Chicago, are unconstitutional as applied to plaintiffs, and inapplicable to the plaintiffs for purposes of qualifying a new party candidate for the Office of Mayor of the City of Chicago, Illinois. Further, that the court grant to these plaintiffs such other and further relief in the premises as to this court seems meet and proper.

**COUNT II**

Plaintiffs realledge paragraphs 1 through 28 of Count I as their paragraphs 1 through 28 of this Count II.



22. Plaintiff, Michael Taber, is a duly qualified voter in the State of Illinois, County of Cook and City of Chicago, and this plaintiff did not vote in the next preceding primary election to nominate a candidate for the Office of Mayor of the City of Chicago. Therefore, this plaintiff does qualify as a signatory on nominating papers in support of the candidacy of SWP new party candidate for Mayor of Chicago for purposes of the ensuing general election to be held on or about June 7, 1977.

23. This plaintiff is desirous and seeks actively to exercise federal rights secured to him under the provisions of the First Amendment to the Constitution of the United States of America to freely associate with other persons who would or might also support the candidacy of plaintiffs, SWP new party candidate for Mayor of the City of Chicago, Illinois; and in so doing, plaintiff, Michael Taber seeks further to exercise his federal right to meaningfully participate in the total election process in the City of Chicago and State of Illinois, as is a right secured to him by the provisions of the First and Fourteenth Amendments of the Constitution of the United States of America.

24. The unreasonable, unnecessary, onerous and burdensome restrictions imposed by the statutes and laws of the State of Illinois complained of herein, as well as the conduct of the named defendants herein in implementing said laws, combine to invidiously discriminate against this plaintiff in his exercise of his federally protected rights of free association and right to participate meaningfully in the total election process; and the same do deprive this plaintiff of due process and equal protecion of the laws in violation of the First and Fourteenth Amendments to the Constitution of the United States.

WHEREFORE, Michael Taber prays for the entry of a judgment order declaring the provisions of the statutes and laws of the City of Chicago election code applicable to ballot requirements for this upcoming special election for the Office of the Mayor of the City of Chicago unconstitutional and void; and plaintiff Michael Taber prays for the entry of preliminary and permanent injunction against the defendants and each of them restraining and enjoining their further implementation of said laws or otherwise unlawfully restricting this plaintiff in the lawful exercise of his federally protected rights as aforesaid.

## COUNT III

Plaintiffs reallege paragraphs 1 through 31 of Count II above, as paragraphs 1 through 31 of this Count III.

25. Plaintiff, John Doe, is a duly qualified voter in the State of Illinois, County of Cook and City of Chicago; this plaintiff did vote in the next preceding primary election for the nomination of a candidate for Mayor of the City of Chicago, and because of the restrictions and prohibitions of the statutes and laws of the State of Illinois and the City of Chicago complained of herein, per forces this plaintiff is restricted and prohibited from being or becoming a qualified signatory on nomination papers in support of the nomination of the SWP's new party candidate for Mayor of the City of Chicago, as the candidate of this plaintiff and SWP's choice to appear on the ballot in the June 7, 1977 special election to be held in the City of Chicago, as a new party candidate for the Office of Mayor of the City of Chicago.

26. Plaintiff, John Doe, despite having already voted in a primary election held to nominate a candidate for the Office of Mayor of the City of Chicago now desires and actively seeks to freely exercise federally protected rights



under the First and Fourteenth Amendment to the Constitution of the United States, to associate with plaintiff, Michael Taber, and other persons who would or might also support the candidacy of plaintiff, SWP's new party candidate for Mayor of the City of Chicago, and in so doing this plaintiff seeks to effectively participate in the total election process in the City of Chicago and State of Illinois, as his right as a qualified voter, under the provisions of the First and Fourteenth Amendments to the Constitution of the United States.

27. The unreasonable, unnecessary, onerous and burdensome restrictions imposed by the statutes and laws of the State of Illinois complained of herein, as well as the conduct of the named defendants herein in implementing said laws, combined to invidiously discriminate against this plaintiff in his exercise of federally protected rights of free association and right to participate meaningfully in the total election process; and the same do deprive this plaintiff of due process and equal protection of the laws in violation of 'he First and Fourteenth Amendments to the constitution of the United States.

WHEREFORE, Michael Taber prays for the entry of a judgement order declaring the provisions of the statutes and laws of the State of Illinois and the City of Chicago applicable to the upcoming June 7, 1977 Special Election complained of herein, unconstitutional and void; and plaintiff prays for the entry of a preliminary and permanent injunction the defendants of each of them, restraining and enjoining their further implementation of said laws or otherwise unlawfully restricting this plaintiff in the lawful exercise of federally protected rights as aforesaid.

All plaintiffs here, to wit: The SWP new party candidate for Mayor and Michael Taber further pray that pursuant to

Title 28, U. S. C. 2281 and 2283, a three judge federal district court be immediately convened to hear and determine this proceeding.

Plaintiffs have no adequate remedy at law.

Plaintiffs and each of them further pray that an injunction be issued without bond; and that bond be expressly waived:

A. Restraining the defendants, their agents and attorneys from the enforcement, implementation, operation or execution of any of the foregoing statutes of the State of Illinois complained of herein.

B. Restraining defendants, their agents and attorneys from impeding, restricting, or imposing onerous or unreasonable burdens upon the plaintiffs or any of them, or persons with whom plaintiffs associate or enlist as supporters from exercising the rights, privleges and immunities guaranteed to them by the Constitution and laws of the United States, particularly those rights and privileges secured to plaintiffs under the provisions of the First and Fourteenth Amendments to the Constitution of the United States.

C. Whatever relief the court decides is just and reasonable.

That pending the hearing and determination of the prayers for relief, an interlocutory injunction issue restraining the defedants, their agents, attorneys and all others acting in concert with them from enforcing in any way the provisions of the statutes complained of herein, or from instituting or undertaking any proceeding whatsoever pursuant to said statutes and ordinances against the plaintiffs, their members, friends and supporters herein.



That because of the delicate nature of the federal rights sought to be protected herein, and further because of the unreasonable and burdensome limitations of time imposed by the statutes and laws of the State of Illinois complained of herein, this cause be advanced by this Honorable Court and set for immediate hearing as an emergency matter.

For such other further relief as to the Court would be meet and proper.

/s/ LANCE HADDIX

*Attorney for plaintiffs*

33 North Dearborn
Suite 815
Chicago, Illinois 60602
(312) 263-7344

IN THE

**UNITED STATES DISTRICT COURT**

FOR THE

**NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

GERALD ROSE, MELVIN JOHNSON, RICHARD LEEBOVE, U. S. LABOR PARTY, JOHN BROWN and MITCHELL HIRSCH,
*Plaintiffs,*

vs.

JOHN HANLY, MARIE H. SUTHERS, and HOWARD C. MEDLEY, Sr.,
*Defendants.*

No. 77 C 326
(Connected case: No. 77 C 255-

Received
Jan. 31, 1977

**COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

GERALD ROSE, MELVIN JOHNSON, RICHARD LEEBOVE, U. S. LABOR PARTY, JOHN BROWN and MITCHELL HIRSCH, plaintiffs, complain against JOHN H. HANLY, MARIE H. SUTHERS, and HOWARD C. MEDLEY, SR., in their official capacity as members of the Board of Election Commissioners of the City of Chicago, State of Illinois, and state:

This is an action challenging the announced signature requirement and filing deadline for petitions of certain candidates running in the Special Mayoral Election to be held in the City of Chicago on June 7, 1977.



**Jurisdiction and Venue**

1. This Court has jurisdiction over this matter pursuant to 28 U. S. C. § 1343(3), in that plaintiffs seek to redress the deprivation, under color of State law, of rights secured to them by the Constitution of the United States; pursuant to 28 U. S. C. § 1343(4) and 42 U. S. C. § 1983, in that plaintiffs allege, as noted above, that defendants' conduct in their official capacity and acting under color of State law has and will deprive plaintiffs of certain rights, privileges, or immunities secured to plaintiffs by the Constitution of the United States; pursuant to 28 U. S. C. § 1651 in that the plaintiffs seek injunctive relief; and pursuant to 28 U. S. C. § 2201 in that plaintiffs seek declaratory relief.

2. Venue is proper in this District pursuant to 28 U. S. C. § 1391(b), in that this action is not founded upon diversity of citizenship, and this District is where all of the defendants reside and in which the claims asserted by plaintiffs herein arose.

**Parties**

3. Plaintiff Gerald Rose (hereinafter "ROSE") desires to run for election as Mayor of the City of Chicago in the Special Mayoral Election to be held June 7, 1977. He meets the requirements for that office as set forth in Illinois Revised Statutes Ch. 24, § 3-14-1. ROSE desires to run as an independent candidate in the election.

4. Plaintiff Melvin Johnson (hereiafter "JOHNSON") is a duly qualified voter in the City of Chicago and desires to circulate nominating petitions for plaintiff ROSE pursuant to Ill. Rev. Stat. Ch. 46, § 10-4.

5. Plaintiff Richard Leebove (hereinafter "LEEBOVE") is a duly qualified voter in the City of Chicago and desires to vote for plaintiff ROSE.

6. Plaintiff U. S. LABOR PARTY is an unincorporated voluntary association and a "group of persons desiring to form a new political party" for purposes of the Special Mayoral Election to be held June 7, 1977 as provided in Ill. Rev. Stat. Ch. 46 § 10-2.

7. Plaintiff John Brown (hereinafter "BROWN") is a duly qualified voter in the City of Chicago and desires to circulate petitions for plaintiff U. S. LABOR PARTY as a new political party pursuant to Ill. Rev. Stat. Ch. 46 § 10-2.

8. Plaintiff Mitchell Hirsch (hereinafter "HIRSCH") is a duly qualified voter in the City of Chicago and desires to vote for the mayoral candidate of the U. S. LABOR PARTY.

9. Defendants, Hanly, Suthers and Medley are members of the Board of Election Commissioners of the City of Chicago, and as such are responsible pursuant to Ill. Rev. Stat. Ch. 46, § 10-6 for accepting nominating petitions for candidates seeking election in and preparing ballots for the Special Mayoral Election.

**Preliminary Statement**

10. On December 20, 1976 the office of Mayor of the City of Chicago became vacant. On January 13, 1977, as prescribed by Ill. Rev. Stat. Ch. 24 § 3-2-7 and § 3-4-6, the City Council fixed June 7, 1977 as the date of the Special Mayoral Election (hereinafter "general election") to fill the vacancy.

11. On or about January 18, 1977, defendants Hanly, Suthers and Medley published a "1977 Election Calendar for Chicago" (hereinafter "the Calendar"), attached hereto as Exhibit A to this Complaint.

12. The Calendar provides in accordance with Ill. Rev. Stat. Ch. 46 § 7-5 that the Special Mayoral Primary Election (hereinafter "primary") is to be held April 19, 1977.



**COUNT I**

**Filing Deadline for Independent Candidates**

13. The Calendar states that the last day for candidates of established political parties to file nominating petitions for the April 9 primary is February 19, 1977. The last day for independent candidates to file nominating petitions for the June 7 general election is also February 19, 1977. The authority for this simultaneous filing date for independent candidates running in the general election and for candidates of established political parties running in the primary is apparently that portion of Ill. Rev. Stat. Ch. 46 § 10-3 which states:

> "Every petition for nomination of an independent candidate for any office for which candidates of established political parties are nominated by primary shall be filed at the time designated in Sections 7-12 of this Act in regard to the nomination by primary of any other candidate for such office."

14. The Calendar provides in accordance with Ill. Rev. Stat. Ch. 46 § 10-6 that the last day for "new political parties" to file nominating petitions for the June 7 general election is not until April 4, 1977.

15. The early filing deadline for independent candidates imposed by Ill. Rev. Stat. Ch. 46 § 10-3 as applied in his case violates the rights of plaintiffs ROSE, JOHNSON and LEEBOVE under the First and Fourteenth Amendments to the Constitution of the United States because, by requiring independent candidates to circulate and submit nominating petitions within 32 days of the first announcement of the filing period, it places an unreasonably and unnecessarily heavy burden on plaintiff ROSE, thereby restricting his right to associate for the advancement of his political beliefs, and the rights of plaintiffs JOHNSON and

LEEBOVE to associate freely for the purposes of expressing their political beliefs and exercising effectively their right to vote.

16. The unreasonably early nomination deadline for independent candidates invidiously discriminates between independent candidates and candidates of established and new political parties, without any necessary and compelling state justification, thereby denying plaintiffs equal protection under the laws as guaranteed by the Fourteenth Amendment.

17. WHEREFORE, plaintiffs ROSE, JOHNSON and LEEBOVE respectfully request that this Honorable Court:

A. Declare those portions of Ill. Rev. Stat. Ch. 46 § 10-3 which require plaintiff ROSE to file nominating petitions as an independent candidate by February 19, 1977 to be unconstitutional as applied by the defendants in this case.

B. Mandatorily enjoin defendants Hanly, Suthers and Medley to accept the nominating petitions of plaintiff ROSE as an independent candidate for election in the Special Mayoral Election to be held June 7, 1977 if filed on or before May 7, 1977.

C. Grant such other and further relief as the Court deems necessary to protect plaintiffs' rights and the public interest and to prevent violation of the public trust.

D. Award plaintiffs attorneys' fees pursuant to the Civil Rights Attorneys' Fees Awards Act of 1976, 42 U. S. C. § 1988.

## COUNT II

### Signature Requirement for Independent Candidates

18. The Calendar states that the signature requirement for the nominating petitions for candidates of established political parties in the primary is:



| Party | Minimum |
|---|---|
| Democratic | 4,460 |
| Republican | 2,558 |

The authority for this requirement is Ill. Rev. Stat. Ch. 46 § 7-10 which requires the signatures of at least one-half of one percent of the number of voters who voted for the leading vote-getter of that party in the last general election.

19. The Calendar states that the signature requirement for the nominating petitions for independent candidates in the general election is:

| | |
|---|---|
| Minimum: | 35,947 |
| Maximum: | 57,514 |

The authority for this requirement is Ill. Rev. Stat. Ch. 46 § 10-3 which requires the signatures of not less than 5%, nor more than 8% of the total number of voters in the last Mayoral election.

20. Ill. Rev. Stat. Ch. 46 § 10-3 also provides that an independent candidate for statewide office may secure a position on the ballot by filing nomination papers signed by "not less than 25,000 qualified voters of the state".

21. In order to secure a place on the June 7 ballot as an independent candidate, plaintiff ROSE is required to secure 35,947 signatures before February 19, 1977. Thus, particularly in view of the early filing deadline adverted to in Count I, the signature requirement imposed by Ill. Rev. Stat. Ch. 46 § 10-3 for independent candidates is onerous and invidiously discriminates against plaintiff ROSE, who desires to seek election as Mayor as an independent candidate, and his supporters. No necessary and compelling justification exists for this discrimination and the signature requirement for independent candidates as applicable in

this case therefore is violative of the Equat Protection Clause of the Fourteenth Amendment and the First Amendment to the United States Constitution.

22. To require plaintiff ROSE to secure 35,947 signatures in a 31-day period to run as an independent candidate for the office of Mayor of the City of Chicago, when an independent candidate for Governor of the State of Illinois, Secretary of State or any other statewide office would be required under the very same statute to file no more than 25,000 signatures is also an unjustifiable denial of equal protection.

23. WHEREFORE, plaintiffs ROSE, JOHNSON and LEEBOVE respectfully request that this Honorable Court:

A. Declare those portions of Ill. Rev. Stat. Ch. 46 § 10-3 which require an independent candidate to file a petition with at least 35,947 signatures to be unconstitutional as applied by the defendants in this case.

B. Mandatorily enjoin defendants Hanly, Suthers and Medley to accept the nominating petitions of plaintiff ROSE as an independent candidate in the general election if filed with a minimum of 7,189 signatures, or one percent of the voters in the last Mayoral election.

C. Grant such other and further relief as the Court deems necessary to protect plaintiffs' rights and the public interest and to prevent violation of the public trust.

D. Award plaintiffs attorneys' fees pursuant to the Civil Rights Attorneys' Fees Awards Act of 1976, 42 U. S. C. § 1988.

## COUNT III

### Filing Deadline for New Parties

24. The Calendar states in accordance with Ill. Rev. Stat. Ch. 46 § 10-6 that the last day for a "group of persons



desiring to form a new political party" to file petitions to become a "new political party" for the June 7 general election is April 4, 1977.

25. The filing deadline for new political parties imposed by Ill. Rev. Stat. Ch. 46 § 10-6 violates the rights of plaintiffs, U. S. LABOR PARTY, HIRSCH and BROWN under the First and Fourteenth Amendments to the Constitution of the United States because, by requiring new political parties to circulate and submit nominating petitions in advance of the date of the primary, the statute forces the U. S. LABOR PARTY to operate in a political vacuum and places an unreasonably and unnecessarily heavy burden on its supporters, thereby restricting their fundamental rights to associate for the advancement of their political beliefs, and their fundamental rights to associate freely for the purpose of expressing their political beliefs and to exercise effectively their right to vote.

26. WHEREFORE, plaintiffs U. S. LABOR PARTY, HIRSCH and BROWN respectfully request that this Honorable Court:

A. Declare that portion of Ill. Rev. Stat. Ch. 46 § 10-6 which requires plaintiff U. S. LABOR PARTY to file a petition to become a new political party by April 4, 1977 to be unconstitutional as applied by defendants in this case.

B. Mandatorily enjoin defendants Hanly, Suthers and Medley to accept the nominating petitions of plaintiff U. S. LABOR PARTY for election in the Special Mayoral Election to be held June 7, 1977 if filed on or before May 7, 1977.

C. Grant such other and further relief as the Court deems necessary to protect plaintiffs' rights and the public interest and to prevent violation of the public trust.

D. Award plaintiffs attorneys' fees pursuant to the Civil Rights Attorney's Fees Awards Act of 1976, 42 U. S. C. § 1988.

## COUNT IV

### Signature Requirement for New Political Parties

27. Ill. Rev. Stat. Ch. 46 § 10-2 provides that new political parties shall circulate petitions with the name[s] of their candidate[s], and in pertinent part states as follows:

> If such new political party shall be formed for any district or political subdivision less than the entire State, such petition shall be signed by qualified voters equaling in number *not less than 5% of the number of voters who voted at the next preceding general election in such district or political subdivision in which such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area.* (Emphasis added.)

28. Ill. Rev. Stat. Ch. 46 § 10-3 provides with respect to the filing of nominating petitions for independent candidates:

> Nominations of independent candidates for public office within any district or political subdivision less than the State, may be made by nomination papers signed in the aggregate for each candidate by qualified voters of such district, or political subdivision, equaling *not less than 5%, nor more than 8% of the number of persons, who voted at the next preceding general election in such district or political subdivision in which such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area.* (Emphasis added.)

29. As has been heretofore averred in paragraph 19 of this Complaint, the Calendar prepared by defendants Hanly, Suthers and Medley states that the minimum signature requirement for an independent candidate in the June 7 general election is 35,947 signatures. However, the calendar states that the minimum signature requirement to establish a new political party for the June 7 general election is 63,373 signatures.



30. Defendants have used figures from the April 1, 1975 Mayoral Election to compute the signature requirement for independent candidates, but have used figures from the November 2, 1976 general election, at which county, state and national candidates were elected, to compute the signature requirement for a new political party.

32. The statutes require defendants to compute the minimum number of petition signatures required for both independent candidates and new political parties using the total vote at the April 1, 1975 Mayoral Election because it was "the next preceding general election in such district or political subdivision in which such disrict or political subdivision voted as a unit for the election of officers to serve its respective territorial area". Using April 1, 1975 voting statistics, a minimum of 35,937 signatures should be required for both new political parties and independent candidates.

33. There is no necessary and compelling state justification for the defendants' construction of Ill. Rev. Stat. Ch. 46 § 10-2.

34. The defendants' interpretation of Ill. Rev. Stat. Ch. 46 § 10-2, impermissibly discriminates against plaintiff U. S. LABOR PARTY and its supporters in violation of the Equal Protection Clause of the Fourteenth Amendment.

35. WHEREFORE, notwithstanding any other relief requested herein, plaintiff U. S. LABOR PARTY respectfully requests that this Honorable Court:

A. Declare the construction of Ill. Rev. Stat. Ch. 46 § 10-2 which requires plaintiff U. S. LABOR PARTY to file a petition with at least 63,373 signatures to be unconstitutional as applied by defendants in this case.

B. Mandatorily enjoin defendants Hanly, Suthers, and Medley to accept the petition of plaintiff U. S. LABOR PARTY to become a new political party if filed with a minimum of 35,947 signatures.

C. Grant such other and further relief as the Court deems necessary to protect plaintiffs' rights and the public interest and to prevent violation of the public trust.

D. Award plaintiff attorney's fees pursuant to the Civil Rights Attorneys' Fees Awards Act of 1976, 42 U. S. C. § 1988.

**COUNT V**

36. The Calendar states in accordance with Ill. Rev. Stat. Ch. 46 § 7-10 that the signature requirement for nominating petitions for candidates of established political parties in the primary is:

| Party | Minimum |
|---|---|
| Democratic | 4,460 |
| Republican | 2,558 |

37. The Calendar states in accordance with Ill. Rev. Stat. Ch. 46 § 10-3 that the signature requirement for nominating petitions for independent candidates in the general election is:

| | |
|---|---|
| Minimum: | 35,947 |
| Maximum: | 57,514 |

38. The Calendar states that the signature requirement for the nominating petitions for new political parties in the general election is:

| | |
|---|---|
| Minimum: | 63,373 |

39. Ill. Rev. Stat. Ch. 46 § 10-6 provides that a new political party desiring to run candidates for statewide office



may secure a position on the ballot by filing a petition for the formation of a new party signed by "not less than 25,000 qualified voters".

40. The signature requirement imposed by Ill. Rev. Stat. Ch. 46 § 10-2 for new political parties invidiously discriminates against plaintiff U. S. LABOR PARTY, "a group of individuals desiring to form a new political party", and plaintiffs HIRSCH and BROWN. There is no necessary and compelling state justification for the signature requirement for new political parties and the requirement therefore is violative of the Equal Protection Clause of the Fourteenth Amendment and the First Amendment to the United States Constitution.

41. To require plaintiff U. S. LABOR PARTY to secure 63,373 signatures to run as a candidate for the office of Mayor of the City of Chicago, when a new political party running candidates statewide would be required under the very same statute to file no more than 25,000 signatures is also an unjustifiable denial of equal protection.

42. WHEREFORE, plaintiffs U. S. LABOR PARTY, HIRSCH and BROWN respectfully request that this Honorable Court:

A. Declare that portion of Ill. Stat. Ch. 46, § 10-2 which requires a "group of persons desiring to form a new political party" to file petition with at least 63,373 signatures to be unconstitutional as applied by the defendants in this case.

B. Mandatorily enjoin defendants Hanly, Suthers and Medley to accept the petitions of plaintiff U. S. LABOR PARTY to become a new political party if filed with a minimum of 7,189 signatures, or one percent of the voters in the last mayoral election.

C. Grant such other and further relief as the Court deems necessary to protect plaintiffs' rights and the public interest and to prevent violation of the public trust.

D. Award plaintiffs attorneys' fees pursuant to the Civil Rights Attorneys' Fees Awards Act of 1976, 42 U. S. C. § 1988.

/s/ _____
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IN THE

**UNITED STATES DISTRICT COURT**

FOR THE

**NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

| | |
|---|---|
| GERALD ROSE, MELVIN JOHNSON, RICHARD LEE-BOVE, U. S. LABOR PARTY, JOHN BROWN and MITCHELL HIRSCH, *Plaintiffs,* vs. JOHN HANLY, MARIE H. SUTHERS, and HOWARD C. MEDLEY, SR., *Defendants.* | No. 77 C 326 |

**MOTION FOR PRELIMINARY AND PERMANENT INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 65(a), plaintiffs respectfully move this Court for a Preliminary and Permanent Injunction, in the form attached hereto, restraining defendants Hanly, Suthers and Medley, their agents, successors, attorneys, representatives and those acting in concert with them, from enforcing those portions of Ili. Rev. Stat. Ch. 46, §§ 10-2, 10-3 and 10-6 relating to the signature requirements and filing deadlines for nominating petitions for independent candidates and new political parties as defendants have announced those provisions are to be applied to the Special Mayoral Election scheduled for June 7, 1977.

In support of this motion, plaintiffs state as follows:

1. Plaintiff GERALD ROSE desires to run as an independent candidate for Mayor of the City of Chicago. Plaintiffs MELVIN JOHNSON and RICHARD LEE-BOVE desire to circulate petitions on his behalf and support him as a candidate. Plaintiff U. S. LABOR PARTY desires to be a new political party for purposes of the Special Mayoral Election. Plaintiffs JOHN BROWN and MITCHELL HIRSCH desire to circulate petitions for the party and support its candidate in that election.

2. The 1977 Election Calendar for Chicago, prepared and issued or on about January 18, 1977 by defendants pursuant to Ill. Rev. Stat. Ch. 46, §§ 10-2, 10-3 and 10-6, requires individuals desiring to run as independent candidates for Mayor to secure and file petitions with the 35,947 signatures by February 19, 1977, and individuals desiring to form a new political party for the Mayoral Election to secure and file petitions with 63,373 signatures by April 4, 1977.

3. Without any compelling, necessary or even rational governmental interest therefor, defendants have construed identical language in Ill. Rev. Stat. Ch. 46, §§ 10-2 and 10-3 and yet have come up with two different signature requirements for independent candidates and new political parties, to the substantial detriment of persons desiring to form new political parties. This construction denies plaintiff U. S. LABOR PARTY and its supporters equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution.

4. Without any compelling, necessary or even rational governmental interest therefor, defendants have required that both independent candidates and new political parties file more signatures to qualify for ballot position in the



Chicago Mayoral Election than would be required for ballot position in an Illinois statewide election. This requirement abridges the rights of plaintiffs under the First and Fourteenth Amendments to the United States Constitution.

5. Without any compelling, necessary or even rational governmental interest therefor, defendants have required that both independent candidates and new political parties file their petitions well in advance of the date of party primaries in which they may not even participate and far in advance of the general election in which they hope to participate—independs on February 19 and new parties on April 4, 1977. This requirement abridges the rights of plaintiffs under the First and Fourteenth Amendments to the United States Constitution.

6. In view of the extremely short notice which plaintiffs received of this Special Mayoral Election and the weather conditions under which plaintiffs have been operating, the effect of both these signature requirements and the time period in which these requirements must be met will be to prevent these plaintiffs from effectively organizing to seek ballot position and further express their political ideas in this campaign. In view of all the circumstances, the requirements for ballot position formulated by the defendants place an unnecessary and unconstitutional burden on plaintiffs' ability to engage in the electoral process. Such requirements deny plaintiffs their rights under the First Amendment and deny plaintiffs equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution.

7. Under Ill. Rev. Stat., Ch. 46, §§ 10-2 and 10-3, both independent candidates and new political parties running in statewide elections may secure ballot position by filing nominating petitions containing as few as 25,000 signatures.

During the last statewide election in November, 1976, Chicago voters cast 1,266,866 out of 4,838,182 or 26.18% of the total ballots cast in the state. A resonable signature requirement for independent candidates and new political parties in this election therefore would be no more than 6,545 signatures (26.18% of 25,000).

8. The special circumstances of this election justify the extension of the filing deadline for petitions for independent candidates and new political parties until May 1, 1977, which is five weeks before the June 7 general election. This extended deadline would afford defendants ample time to print and distribute absentee and regular ballots and would also afford the plaintiffs a reasonable opportunity to exercise their First Amendment rights.

9. Unless a preliminary injunction is entered which reduces the signature requirements for independent candidates and new political parties and extends the time period in which signatures can be gathered, plaintiffs will be deprived of their constitutional rights to meaningfully participate in this Election and thereby will suffer irreparable harm.

10. Well-established principles of equal protection law and several recent federal District Court decisions regarding the right of independent and new party candidates to gain ballot position make it evident that these plaintiffs have a subsantial likelihood of prevailing on the merits of this suit. These cases will be set forth in plaintiffs' memorandum in support of this motion.

11. No significant harm will be caused to defendants by requiring them to accept as valid those nominating petitions for independent candidates and new political parties containing a lesser number of signatures than currently required in the 1977 Election Calendar, and no significant harm will be caused by requiring them to extend the filing deadline past the date of the partisan primaries.



12. The public interest would be served by the entry of the preliminary injunction requested.

WHEREFORE, plaintiffs respectfully request this Court to enter an order mandatorily enjoining the defendants to accept as valid petitions for independent candidates and new political parties in the June 7, 1977 Special Mayoral Election those petitions containing 6,545 signatures and filed on or before May 1, 1977.

Respectfully submitted,

/s/ _____
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*One of the attorneys*
*for the Plaintiffs*

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IN THE

**UNITED STATES DISTRICT COURT**

FOR THE

**NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

SOCIALISTS WORKERS PARTY, MICHAEL TABER, AND JOHN DOE,

*Plaintiffs,*

vs.

CHICAGO BOARD OF ELECTION COMMISSIONERS, JOHN H. HANLY, MARIE H. SUTHERS, AND HOWARD C. MEDLEY, SR., INDIVIDUALLY AND AS MEMBERS OF THE CHICAGO BOARD OF ELECTION COMMISSIONERS, FRANKLIN J. LUNDING, WILLIAM L. HARRIS, DON W. ADAMS, MICHAEL E. LAVELLE, MICHAEL LEVINSON, DON HAGEN, DELMAR WARD, INDIVIDUALLY AND AS MEMBERS OF THE STATE BOARD OF ELECTIONS, AND JOHN MARCIN, INDIVIDUALLY AND AS CITY CLERK OF CHICAGO,

*Defendants.*

No. 77 C 255



**EMERGENCY MOTION FOR PRELIMINARY AND PERMANENT INJUNCTION AND OTHER RELIEF**

Pursuant to Federal Rule of Civil Procedure 65 (a) plaintiffs respectfully move this Court for a Preliminary and Permanent Injunction, restraining defendants, their agents, successors, attorneys, representatives, and those acting in concert with them, from enforcing those portions of Ill. Rev. Stat. Ch. 46, §§ 10-2 and 10-6 relating to the signature requirements and filing deadlines for nominating petitions for new political parties as defendants have announced those provisions are to be applied to the Special Mayoral Election scheduled for June 7, 1977. Plaintiffs also respectfully move this Court for a declatory judgment that §§ 10-2 and 10-6, Ill. Rev. Stat. Ch. 46 are unconstitutional as applied.

In support of these motions, plaintiffs state as follows:

1. Plaintiff Socialist Workers Party seeks ballot status as a new political party in the Special Mayoral Election of June 7, 1977. Plaintiff Social Workers Party's mayoral candidate desires to run as a candidate of a new political party for Mayor of the City of Chicago. Plaintiffs Michael Taber and John Doe desire to circulate petitions on behalf of Socialist Workers Party's candidate for Mayor and to support the candidate of the Socialist Workers Party in that election.

2. The 1977 Election Calendar for Chicago, prepared and issued on or about January 14, 1977 by defendants pursuant to Ill. Rev. Stat. Ch. 46, §§ 10-2 and 10-6, requires individuals desiring to form a new political party for the Special Mayoral Election to secure and file petitions with 63,373 signatures by April 4, 1977.

3. Although plaintiffs believe that §§ 10-2, requiring new political parties to collect signatures on nominating

petitions at least equal to five (5) percent of the number of votes cast in the next preceding general election, to be in itself burdensome and discriminatory to minority parties, plaintiffs are only challenging the requirements as they apply to the Special Mayoral Election in the City of Chicago on June 7, 1977. Plaintiffs are challenging these requirements as applied to the Special Mayoral Election because of the special circumstances surrounding it and specifically because they have been denied sufficient notice and adequate time in which to secure the required number of signatures.

4. Without any compelling, necessary or even rational governmental interest, defendants have imposed extremely high signature requirements upon plaintiffs, while denying them sufficient notice and a reasonable time period in which to secure them.

5. The Socialist Workers Party fulfilled the requirements of §§ 10-2 and 10-6 of the Election Code and was certified for the ballot in the April 1, 1975 Mayoral Election in the City of Chicago. On January 27, 1975 the Socialist Workers Party filed 66,243 signatures on nominating petitions—(41, 403 valid signatures were required). There is every reason to believe that the Socialist Workers Party could fulfill the present requirement of 63,373 signatures if they were given a reasonable time period in which to secure them.

6. The Socialist Workers Party was the first new political party to achieve ballot status in a Mayoral Election in the City of Chicago under the provisions of §§ 10-2 and 10-6 of the Election code and is therefore knowledgeable concerning the amount of time, resources and preparation necessary to do so. For the April 1, 1975, Mayoral Election a period of five full months was necessary.



7. Under usual election procedures, no date is specified for the opening of the petitioning period, allowing a new party or independent candidate sufficient time to prepare, plan and collect the necessary number of signatures. In the upcoming June 7, 1977 Special Mayoral Election, the date for the election, and the election calendar, was set on January 13, 1977. Petitions for a new political party must be filed by April 4, 1977, allowing only 81 days to prepare for and secure the required 63,373 signatures. This compares with 41,403 signatures required in the April 1, 1975 Mayoral Election, with no time restriction. The plaintiffs claim that the time restrictions imposed by the Special Election are burdensome and discriminatory and would exclude the Socialist Workers Party as a new political party from ballot status in the June 7, 1977 election, despite their demonstrated ability to fulfill the requirements under usual circumstances.

8. In view of the extremely short notice which plaintiffs received of this Special Mayoral Election, the effect of both the signature requirements and the time period in which these requirements must be met will be to prevent these plaintiffs from effectively organizing to seek ballot position and further express their political ideas in this campaign. In view of all the circumstances, the requirements for ballot position formulated by the defendants place an unnecessary and unconstitutional burden on plaintiffs' ability to engage in the electoral process. Such requirements deny plaintiffs their rights under the First Amendment and deny plaintiffs equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution.

9. The special circumstances of this election justify a reduction in the number of required signatures and an extension of the deadline for filing.

10. Unless a preliminary injunction is entered which reduces the number of signatures required and extends the time period in which the signatures can be gathered, plaintiffs will be deprived of their constitutional rights to meaningfully participate in this election and thereby suffer irreparable harm.

11. Well-established principles of equal protection law and several recent federal District Court decisions regarding the right of a new party and independent candidates to gain ballot position make it evident that these plaintiffs have a substantial likelihood of prevailing on the merits of this case.

12. It is obvious from the facts that insufficient time has been allowed for collecting the massive number of signatures required for the Mayoral candidacy. An important consideration in decisions allowing high signature requirements to stand has been the sufficiency of the time period allowed in which to gather them. *Jenness* v. *Fortson*, 403 U. S. 431, (1970). (Six months in the State of Georgia). No such extended time period is afforded to plaintiffs herein.

13. No significant harm will be caused to defendants by requiring them to accept as valid those nominating petitions for a new political party candidate containing a lesser number of signatures than currently required in the 1977 Election Calendar, and no significant harm will be caused by requiring them to extend the filing deadline. On the other hand, plaintiffs will suffer irreparable injury if a more equitable balance between the number of signatures required and time in which to collect them is not achieved.

19. The State of Illinois and the defendants herein have no special or valid interest in the premises justifying the imposition upon these plaintiffs, as a new party for the purpose of running a candidate for the office of Mayor



of the City of Chicago, the unconstitutional burdens and restrictions as are provided for in the statutes and laws of the State of Illinois complained of herein.

20. Ch. 46, Ill. Rev. Stat., 1973, § 10-2 is unconstitutional as applied. Plaintiffs have moved this court to make determinations in this cause on the merits concerning the constitutionality of the foregoing statute (construed with § 10-6) as applied, for the following reasons:

(i) Plaintiffs present this Court with substantial federal questions for determination;

(ii) Plaintiffs attack statutes having statewide application on constitutional grounds:

(iii) Plaintiffs seek to enjoin enforcement of the statutes of which they complain.

21. Plaintiffs bring this action to compel Defendants to recognize the Socialist Workers Party as a new political party under the terms of the Illinois Election Code (*Ill. Rev. Stat. Ch. 46*, 1973) and to require Defendants to give plaintiffs a place on the ballot in the June 7, 1977 Special Mayoral Election. Plaintiff party polled less than 5 per cent of the total vote cast in the last preceding general election and therefore, under the laws of the State, *Ill. Rev. Stat., Ch. 46, s 10 et seq.* (1973), is compelled to nominate its candidate by petition.

22. Plaintiffs are the Socialist Workers Party of Illinois, and supporting voters on behalf of other voters who wish to vote for the Mayoral candidate of the Socialist Workers Party. The Socialist Workers Party of Illinois is an unincorporated voluntary association having its principle office in Chicago and is the Illinois Division of the Socialist Workers Party of the United States, a national political party. Individual plaintiffs are duly registered voters who desire Plaintiff Socialist Workers Party and its

candidate to appear on the ballot at the 1977 Mayoral Election and desire to vote for the candidate of the Socialist Workers Party.

23. Defendants are members of the State and Municipal Boards of Elections and the City Clerk of the City of Chicago, responsible for the certification and recognition of new political parties and the placement of all candidates on the ballot in the 1977 Mayoral Election. They are barred from recognizing Plaintiff Party as a new party and from placing its candidate on the ballot by the Election Code Provisions challenged here.

24. Plaintiffs sue pursuant to 28 U. S. C., §§ 1331, 1343, 2201, 2202, as well as 42 U. S. C. 1983.

25. The Court must consider the constitutionality of these statutes having statewide application which are attacked on grounds of their constitutional invalidity as applied. Moreover, Plaintiffs raised substantial federal questions concerning the statutes, and seek a judgment declaring the state statutes unconstitutional as applied to protect against the further enforcement of the statutes by state and municipal officials. *Ex parte Poresky*, 290 U. S. 30 (1934); *Phillip* v. *United States*, 312 U. S. 246 (1941); *Communist Party* v. *Ogilvie*, 357 F. Supp. 105.



WHEREFORE, Plaintiffs respectfully request this Court to enter an order mandatorily enjoining Defendants from enforcing §§ 10-2 and 10-6, Ill. Rev. Stat., Ch. 46 in the Special Mayoral Election and plaintiffs also ask this Court to fashion relief as it deems appropriate.

Respectfully submitted,

/s/ _____

LANCE HADDIX

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**UNITED STATES DISTRICT COURT**

FOR THE

**NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

GERALD ROSE, et al.,
*Plaintiffs,*
vs.
JOHN H. HANLY, et al.,
*Defendants.*

No. 77 C 326

**ORDER**

The Chicago Board of Election Commissioners and the Illinois State Board of Elections having agreed, the Court hereby finds and orders that solely as applied to the Special Mayoral Election to be held in Chicago on June 7, 1977 that:

(A) The number of signatures required to fulfill the five percent signature requirements of Ill. Rev. Stat., Ch. 46, Par. 10-2 to qualify for placement on the ballot as a new political party in the Special Mayoral Election shall be 35,947 signatures.

(B) That the last date for filing as an independent candidate in the Special Mayoral Election, pursuant to Ill. Rev. Stat., Ch. 46, Par. 10-3, shall be April 4, 1977.

(C) This Order is without prejudice to the parties contesting any of the remaining issues in the case.

Enter:

/s/ Bernard M. Decker
*Judge*

Dated: Feb. 11, 1977.



**TRANSCRIPT OF PROCEEDINGS—FEB. 11, 1977**

IN THE

**UNITED STATES DISTRICT COURT**

FOR THE

**NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

SOCIALIST WORKERS PARTY, et al.,
*Plaintiffs,*
CHICAGO BOARD OF ELECTION COMMISSIONERS, et al.,
*Defendants.*
GERALD ROSE, et al.,
*Plaintiffs,*
vs.
JOHN HANLY, et al.,
*Defendants.*

No. 77 C 255
and
No. 77 C 326

Before the HON. BERNARD M. DECKER, Judge, on Friday, February 11, 1977, at the hour of 10:00 o'clock, a. m.

PRESENT:

MR. JEFF COLMAN,
*on behalf of the plaintiffs;*

MR. IAN H. LEVIN,
MR. LANCE HADDIX,
MR. MICHAEL L. LEVINSON,
*on behalf of certain defendants, as herein shown.*

THE CLERK: 77 C 326, Rose vs. Hanly; plaintiffs' [2] motion for leave to file memorandum in support of motion for preliminary and permanent injunction and in opposition to defendants' motion to dismiss in excess of 15 pages.

(The following proceedings were had herein, in open court, as follows:)

MR. COLMAN: Good morning, your Honor.

THE COURT: Good morning.

MR. COLMAN: Jeff Colman for the plaintiffs Rose, et al.

THE CLERK: And there is a motion in a companion case, 77 C 255, Socialist Workers Party vs. Chicago Board of Election Commissioners; an emergency motion for preliminary injunction and other relief and brief in support.

MR. LEVIN: I wasn't served with that, Judge, but, at any rate, I'm waiving any notice, Judge. I don't mean to—I haven't been served with this brief either, Judge.

I would just like to say this for the record, my name is Ian Levin representing the Chicago Board of Election Commissioners, and, as I noted the other day, Tuesday when we were in court and were first noticed in, given notice at 4:00 o'clock on Monday afternoon, and the State Board was not notified and the State Board, because they are—even though it is a challenge solely applied to this special mayoral election, the state, there [3] are state statutes involved and the attorney for the State Board is here, Mr. Michael Levinson. I would just like that for the record, too, Judge.

THE COURT: Well, first of all, somebody wants leave to file a brief?

MR. COLMAN: Yes, your Honor. It's 28 pages long and it is a memorandum in opposition to the defendants'



motion to dismiss and also in support of our motion for preliminary and permanent injunctive relief. So, it is really two memoranda.

MR. LEVIN: I haven't seen it, Judge, I mean, it is—I will try to read it, just as well as I am sure you will, if it is—I don't know what the Court's policy is on it, Judge. I don't know.

THE COURT: Well, I am generally presented by these after they are prepared. There is a lot of paper going to be wasted.

MR. HADDIX: Your Honor, my name is Lance Haddix; I'm representing the SWP.

I likewise am asking leave to file a motion for injunctive relief and other relief as well, that is, as well as a brief in support.

THE COURT: Well, do you need an additional brief, in addition to this?

MR. HADDIX: There are two sets of plaintiffs.

[4] THE COURT: Two sets of plaintiffs?

MR. HADDIX: Yes.

THE COURT: Well, why do I need a double-barreled presentation? Can't you gentlemen get together?

MR. LEVIN: I say the same, Judge.

MR. COLMAN: These are two cases, your Honor.

THE COURT: I know that. I know that they are two cases.

MR. COLMAN: That are consolidated.

THE COURT: I know that they are two cases but aren't they the same issues? Don't they involve the same issues?

MR. COLMAN: They involve similar issues, yes.

MR. COLMAN: Your Honor, we would like this matter set at your earliest convenience for a hearing on the preliminary injunction.

MR. LEVIN: Judge, I might be able to help a little bit here.

THE COURT: All right.

[6] MR. LEVIN: Because—I think that this will expedite things a little bit in the case: I've talked to the State Board of Election attorney and while we think as to this matter that I am going to talk to you about, I don't think that there is a constitutional issue as to it, but I think that we have some responsibility as an election authority to be neutral and to help people get on the ballot rather than to be obstructive, and I don't know—and we were not obstructive here, we just implemented the statute and the next thing we know there are court suits filed. No one ever gave us a demand or anything.

But, be that as it may, for new political parties, Judge, the signature requirements for April 4th as it was published is 63,000-plus signatures. That was keyed—that's the way that it was, I mean, the five percent figure was, under the statute, is as it was always done, the way that it has always been done since the inception of the election code.

I'm sympathetic to the problems that this is a special, as they complained, in this special particular situation, because—

THE COURT: They aren't getting enough time?

MR. LEVIN: Because there is a six month statute, they don't have as much notice.

[7] I've talked to the State Board of Elections and without prejudice to any of the other issues in the case, any of their other issues in the case, we will unilaterally—we do



MR. LEVIN: They should, otherwise they shouldn't be connected cases.

THE COURT: I'm not going to—if they are, I mean, I'm not going to take two briefs. I mean, do you have another brief right there ready?

MR. HADDIX: Your Honor, there are two separate cases here.

THE COURT: I understand that but they involve the same issue.

MR. HADDIX: They involve similar issues, your Honor. One is suing on the part of independent candidates of one party, we are suing on another political party.

[5] MR. LEVIN: It is the same issue.

THE COURT: Well, I mean, it is the same issue exactly, the name of the party doesn't mean anything.

MR. COLMAN: Just for a point of clarification, your Honor, as I understand it, Mr. Haddix is representing only a new political party or established party in his view, possibly, but we represent both a new political party and an independent—independent candidate, and they are—

THE COURT: Well, how long is your brief?

MR. HADDIX: 12 pages, your Honor.

THE COURT: Well, all right. I will give you leave on that. I will give you leave to file it. You at least cut yours down.

MR. HADDIX: Thank you.

THE COURT: All right. Now—

MR. COLMAN: Is leave granted—

THE COURT: Do you expect me to hear something this morning?

unilaterally agree to an order by his Honor that the signature requirement for new political parties on April 4th be the same as independent candidates, which is 35,000-plus signatures, and I think that that is fair and that's an effort to try to help these people get on the ballot and that, I think, removes the problem—and I am not speaking for these people; one of the reasons for—it seems like there is a move for a preliminary injunction and it is that their candidate—

THE COURT: Well, have you discussed this with these gentlemen?

MR. COLMAN: Your Honor, may I respond to this just briefly?

MR. LEVIN: Let me just finish up. I'm not trying to—you will get a chance to respond because this—it seems to me that the independent candidate is really trying to get on either as an independent candidate, but he would have to file by next Friday 35,000 but if it is made April 4th, which is a new political party, which he really is a candidate of the Labor Party, it would put it in a posture of 35,000, so we are prepared, and I have consulted with the State Board, and we unilaterally agree, regardless of what they say and [8] regardless of what the other issues are and without prejudice to our contesting the other issues, because we do think that the other issues can be defended, we are going to agree to a 35,000-plus figure for the political parties.

MR. COLMAN: I just want to clarify a few things: Are you agreeing to 35,000 for independents and third parties and an April 4th filing date for both?

THE COURT: That's what he said.

MR. LEVIN: Well, I will agree to that if you feel that it is necessary for independent candidates. As I understood it—



THE COURT: Well, somebody was shaking his head "yes," is that—

MR. LEVIN: I was. I agree with that. I just said it might be moot. You see, Judge—

THE COURT: Well, he says—

MR. COLMAN: Well, this is what I would like to finish and clarify.

MR. LEVIN: Okay.

MR. COLMAN: If they are agreeing to April 4th and 35,000 for independents and for third parties—

THE COURT: They are.

MR. LEVIN: Yes.

MR. COLMAN: Then that clarifiies one issue in this [9] case. And it certainly, as they say, must be—

THE COURT: It removes the emergency.

MR. COLMAN: It removes an emergency for today and for next week.

Your Honor, in our complaint we set forth what we believe are substantial constitutional reasons why 35,000 is too much and if they are going out seeking 35,000 signatures now that's a burden on their rights, on their First Amendment rights, and it is something that we would want a hearing on. It doesn't have to be Monday but we would like it within ten days.

THE COURT: Well, don't y[illegible]k that you have got—

MR. LEVIN: Judge, I'm not trying to avoid a hearing, I want to make that clear. I am [illegible]g to go to a hearing today. I am not doing it for that r[illegible]n.

I am doing that without prejudice—if they want to contest the other issues, that's fine. We feel that they are contestable.

THE COURT: Well, you have an offer and all yon have got to do is accept it.

MR. LEVIN: It is not even an offer; I offer—we make it unilaterally, Judge, because I think that that's the way that it should be and it is right and I will draft an order that says that the filing date for independent candidates is April 4th and that the signature requirements [10] for new political parties on April 4th is 35,000 signatures, without prejudice to either party to defend the other issues, which we feel can be defended.

MR. COLMAN: We certainly have no objection.

MR. LEVIN: Fine. All right.

THE COURT: All right. Then what's the—

MR. LEVIN: I would like to respond. I haven't seen these 40 pages of briefs.

THE COURT: Well, you can respond to these and I will give you equal time.

MR. LEVIN: I would like—can I have 14 days, Judge? This came up in such a rush. Does that give you—

MR. COLMAN: I would appreciate if you would make it seven days and four days for us to reply and then set it for a hearing.

MR. LEVIN: How about 10 days, Judge?

THE COURT: All right.

MR. LEVINSON: May I address the Court?

THE COURT: Yes.

MR. LEVINSON: My name is Michael Levinson and I represent the State Board of Elections.

We have a board meeting scheduled for February 17th. Although I have spoken to the chairman of the State Board about the case and received some authorization from him,



I'd like to present the matter to the full [11] board. We have conferred with the Attorney General's office and they have consented for the State Board to represent themselves in this matter.

Given my problems in terms of getting authorization from the board and the briefing schedule, seven days or even ten day's limitation, I would suggest to your Honor, is too restrictive and too restrained, given the fact that they have until April 4th to file the requisite number of signatures, and they may very well get the signatures, I think would be taking up the Court's time as well as counsel's time to argue premature issues and for that reason I would ask at least a 20 day period in which to answer the briefs and only as to the issues that we have not stipulated to, which would be the five percent signature requirement.

MR. LEVIN: The five percent signature requirement and the 64 day time filing requirement. We feel that they are wholly defensible. Those are the two remaining issues, We would like to address ourselves to that.

MR. COLMAN: Your Honor, there are additional issues. I would just like to state for the record so your Honor is aware of this that it is our position that the burden is being suffered now and that simply because these people may not be able to get 35,000 signatures, or may be able to get it, does not in any way alleviate the [12] fact that they are operating under First Amendment constraints now and that's why we think that the 20 days is too long.

I would urge that your Honor give them five or seven days, give—

THE COURT: Well, I am going to give then 14 days. I mean, you filed a 28 page brief and another brief here, 12 pages, and you say that there are some important, you say, constitutional questions.

MR. COLEMAN: There certainly are.

MR. LEVIN: We don't think that there are.

THE COURT: What's that?

MR. LEVIN: We don't think that there are, for the record.

THE COURT: Well, I understand that. I undestand you deny that. So, 14, and if you want, you can take 14 or five, I mean, either seven or five.

MR. COLMAN: We will take five.

THE COURT: All right. 14 and five.

I will get the briefs and then I will attempt to give you a date.

MR. LEVIN: Either that or rule, Judge, because you have to rule on the motion to dismiss; if the motion to dismiss is granted the case is over and if it is not then they have to set a hearing to prove some other [13] matters.

THE COURT: All right. Well, I am—that is right. The motion to dismiss—

MR. COLMAN: Your Honor, just on that point I'd like to say that I think that your Honor will either grant the motion to dismiss or grant the motion for preliminary injunction, it will be one or the other. I don't think that there are going to be many questions of fact to be presented.

THE COURT: I wouldn't think so.

MR. COLMAN: So, could we have this set for a hearing date?

THE COURT: I will set it for a date sometime later after I get the briefs. I mean, after I look at the briefs.

THE CLERK: The same schedule in both cases?

THE COURT: Yes.



MR. LEVIN: Yes.

[8] THE COURT: All right.

MR. LEVIN: We are not going to brief the issues that I've agreed to in the, you know, for the purposes of the order.

THE COURT: You are going to only brief the remaining issues?

MR. LEVIN: That is right.

THE COURT: Yes.

MR. LEVIN: Judge, do you want me to come back with an order so that it can be drafted in a way that is—

THE COURT: Well, you have already made your representations.

MR. LEVIN: Okay

THE COURT: All right.

MR. LEVIN: Because I have got it handwritten; I could have it handwritten and then give it to the clerk.

THE COURT: Well, if you want to—well, what is the order going to say?

MR. LEVIN: It's just going to say—

THE COURT: That unilaterally—

MR. LEVIN: Yes, that as applied to—yes, that the Chicago Board of Election Commissioners and the Illinois State Board—

THE COURT: Would you like an order?

MR. LEVIN: What's that?

THE COURT: I am asking counsel.

MR. COLMAN: Yes, your Honor, we would.

THE COURT: All right. Bring in the order.

MR. LEVIN: Okay. How about this afternoon? I will have it here. I will have it ready.

THE COURT: All right. I will be here.

MR. COLMAN: We, of course, would like to have a [15] chance to review it.

MR. LEVIN: Yes. I have no objection to that.

THE COURT: Go ahead, review it together before you come back.

MR. LEVIN: I want to make sure it is done correctly.

THE COURT: All right. Fine.

MR. COLEMAN: Thank you, your Honor.

MR. LEVIN: Thank you, Judge.

THE COURT: Yes. All right.



IN THE

**UNITED STATES DISTRICT COURT**

FOR THE

**NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

| | | |
|---|---|---|
| SOCIALIST WORKERS PARTY, et al., *Plaintiffs,* vs. CHICAGO BOARD OF ELECTION COMMISSIONERS, et al., *Defendants.* | } | — No. 77 C 255 — |

**ORDER**

This mater coming on to be heard by the Court, the Court hereby finds and orders that solely as applied to the Special Mayoral Election to be held in Chicago on June 7, 1977 that:

(A) The number of signatures required to fulfill the five percent signature requirements of Ill. Rev. Stat., Ch. 46, Par. 10-2 to qualify for placement on the ballot as a new political party in the Special Mayoral Election shall be 20,000 signatures.

(B) That the last date for filing as a new political party in the Special Mayoral Election shall be April 18, 1977.

ENTER:

/s/ BERNARD M. DECKER
*Judge*

Dated: March 17, 1977.

IN THE
**UNITED STATES DISTRICT COURT**
FOR THE
**NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

GERALD ROSE, et al.,
*Plaintiffs,*
vs.
JOHN H. HANLY, et al.,
*Defendants.*
No. 77 C 326

This matter coming on to be heard by the Court, the Court hereby finds and orders that solely as applied to the Special Mayoral Election to be held in Chicago on June 7, 1977 that:

(A) The number of signatures required to fulfill the five percent signature requirements of Ill. Rev. Stat., Ch. 46, Par. 10-2 to qualify for placement on the ballot as a new political party in the Special Mayoral Election shall be 20,000 signatures.

(B) The number of signatures required to fulfill the five percent signature requirements of Ill. Rev. Stat., Ch. 46, Par. 10-3 to qualify for placement on the ballot as an independent candidate in the Special Mayoral Election shall be 20,000 signatures.

(C) That the last date for filing either as a new political party or as an independent candidate in the Special Mayoral Election shall be April 18, 1977.

ENTER:
/s/ BERNARD M. DECKER
*Judge*
Dated: March 17, 1977.



TRANSCRIPT OF PROCEEDINGS - MARCH 17, 1977

IN THE
**UNITED STATES DISTRICT COURT**
FOR THE
**NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

SOCIALISTS WORKERS PARTY, et al.,
*Plaintiffs,*
vs.
CHICAGO BOARD OF ELECTION COMMISSIONERS, et al.,
*Defendants.*
No. 77 C 255
and
GERALD ROSE, et al.,
*Plaintiffs,*
vs.
JOHN HANLY, et al.,
*Defendants.*
No. 77 C 326

Before the HON. BERNARD M. DECKER, Judge, on Thursday, March 17, 1977, at the hour of 2:00 o'clock, p.m.
PRESENT:

MR. JEFF COLMAN,
MR. WILLIAM H. LUKING,
on behalf of the plaintiffs;

MR. IAN LEVIN,
MR. MICHAEL L. LEVINSON,
on behalf of certain defendants.

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[17] MR. COLMAN: Good afternoon, your Honor.
THE COURT: Good afternoon.
MR. LEVIN: Good afternoon, Judge.
THE COURT: Good afternoon.

MR. COLMAN: Jeff Colman and Bill Luking here for plaintiffs in 77 C 326.

MR. LEVIN: Ian Levin on behalf of the Board of Election Commissioners of the City of Chicago in both 77 C 326 and C 255.

I suppose the first thing, I think the first thing before we get into some of the other matters, is that I formalized the order that was agreed to in the pretrial conference which would deflect 20,000 signatures for both independent candidates and new political parties, solely as applied to the special mayoral election, and a last date for filing is April 18th, 1977.

I have an order in each case which would just reflect that portion of it, Judge, and I wonder if I could—I tendered it to each party and I wonder if they could just—

THE COURT: Well, are you now talking about both cases or just one case?

MR. LEVINSON: Well I though it would apply to both cases although I guess Mr. Riosti has his own statement to make on that case.

[18] MR. RIOSTI: If your Honor please, I have a plane that I would like to make and I have only two brief statements to make.

THE COURT: All right. I will hear from you. Fine.

MR. RIOSTI: Okay. With regard to the merits of the case involving the Socialist Workers Party, after consultation this morning and consultation with my clients, we would not ask this Court for a hearing but we would ask this Court for leave to submit an offer of proof in writing next week. I think that we could have it filed by Wednesday at the latest, given time for the mails, and we would rest our case on that offer of proof and arguments as to why that offer of proof should be persuasive.



THE COURT: Well, I am willing to have that offer of proof submitted. In the meantime, why you had better collect signatures.

MR. RISOTI: I have explained that to my clients.

THE COURT: All right.

MR. RIOSTI: Now, your Honor, I have one other statement to make with regard to the State's motion and that is merely that my clients in our case would adopt the argument of Gerald Rose, et al., in the companion case in these consolidated cases.

THE COURT: All right. Fine. I will hear then [19] I will hear that argument.

MR. RIOSTI: If your Honor wouldn't mind and would give me leave, I will leave.

THE COURT: I will give you leave.

MR. RIOSTI: All right. Thank you.

MR. LEVINSON: Judge, just on the matter of—I don't know if it is necessary for me to respond and I don't know whether I should ask for time or whether—if you feel that it is necessary, I would rather that you order me.

THE COURT: I will not ask for a response unless I have some difficulty.

MR. LEVIN: All right. Thank you. I have briefed myself out in this case.

THE COURT: All right. Fine.

MR. COLMAN: Just in response to your Honor's question then, I think that the order—I am certain that the order we are submitting to you now would apply to all third parties or independents who want to go out and get ballot placement.

THE COURT: I think it should.

MR. COLMAN: And get ballot placement, including Mr. Risosti's client.

THE COURT: Yes. He will get the benefit of it without agreeing to it.

[20] MR. LEVIN: That is right. That's why I made the order for both cases, Judge.

THE COURT: All right. Fine

MR. LEVIN: May I submit the originals to you?

THE COURT: Yes

(Tendering documents to the Court.)

THE COURT: Now, before I enter this perhaps we had better take up the State's motion to vacate the main, I mean, my memorandum opinion and discuss that briefly and if you want to make any argument over and above what you have given me, what you made back in chambers, why, I mean, back in chambers this morning, of course I will hear from you then.

In effect what you are asking me to do or what you are telling me, as I interpret what you are doing, is that I've misinterpreted the effect of Jackson vs. Ogilvie and that Jackson vs. Ogilvie still represents the law and that you think that the staute says, as they stand, were constitutional and that I was in error when I said that I could find no rational basis to a stricter requirement for a city election than there is for a state wide election?

MR. LEVINSON: That is true in part, your Honor, and I appreciate the opportunity of this honorable Court and with all due respect I thank you for allowing me to [21] at least make my statements for the record.

THE COURT: Well, I certainly want you to make your statement for the record. You go ahead and make them and then I will get a response from these gentlemen.



MR. LEVINSON: Well, again, I thank you, your Honor.

Okay. Our motion is grounded on two basic factors: One, that our interpretation of the Federal Rules of Civil Procedure is that prior to the entry of permanent injunction a hearing may be held and if in fact the plaintiffs in this case, and we were a named party in the Socialist Workers Party; we are at least an indispensable party in the Gerald Rose case, and if we are to defend the legitimacy and legality of the state statute we would have, we should have the opportunity to defend the statute, or else it is just a private agreement between the Chicago Board and the plaintiffs in this suit.

Our interpretation—

THE COURT: You were a party in one action and not in the other, is that right?

MR. LEVINSON: That's true but we signed a stipulation with regard to the Gerald Rose case, which in fact made us a party to that case. We were in court and we were a party to the agreement to extend the filing deadlines for independent and new political party candidates to [22] April 4th. We signed that stipulation. It was binding in both cases.

It is our position, your Honor, with all due respect, that prior to a preliminary injunction being ordered, were the plaintiffs to escape the constraints of the United States Supreme Court, which specifically upheld the issues and the statutes at issue in this case, to be constitutional, they have to prove a case that the special election in the City of Chicago is some peculiar circumstance whereby this Court would have the authority to go outside the Supreme Court decisions.

They have not presented any case. We have had no opportunity to defend. We feel that there are—and I think that this Court can take judicial notice of the fact—that special

elections, both municipal, township, and whatever, are held throughout the state. The state statute provides that indedendent nominating petitions as well as new political party petitions have to be filed before 64 days prior to the election.

The stipulated order which is on your Honor's desk is a result of a private agreement to violate state law. I don't think that the Chicago Board has the authority to extend filing deadlines, especially in view of the Supreme Court's decision upholding the constitutionality of that provision.

[23]If, however, this Court feels that the special election presents some situation that would bring us without the confines, I think that they are required under federal rules to present the case and the state is also allowed to present its record, to defend, to show why the special election in the City of Chicago is no different than any other special election throughout the state.

So the two basic reasons, to summarize, is, one, we have never had an opportunity to present a defense, the plaintiffs have never presented any evidence to warrant a preliminary —a permanent injunction being established, which I think the rules call for, some evidentiary hearing, and more than that, I think that the matter is res judicata by the U.S. Supreme Court.

THE COURT: Let me ask you this, were you furnished copies of the briefs in this case? In these cases? Were you furnished copies?

MR. LEVINSON: I was only furnished a copy of the petition and I signed a motion to dismiss the complaint. That's all.

THE COURT: Well, what about the briefs in the case, though? Weren't you furnished copies? Weren't you aware of the briefs that were filed?



MR. LEVINSON: Not all the briefs. The negotiations went on between—no, all of the negotiations [24] went on between the Chicago Board of Election Commissioners and the plaintiffs.

THE COURT: Well, were they, in effect, representing you?

MR. LEVINSON: Not entirely.

MR. COLMAN: He is not talking about negotiations he is talking about briefs.

THE COURT: Briefs.

MR. LEVINSON: I understand what the Court said. Thank you.

THE COURT: Well, what I was asking you—

MR. LEVINSON: I was given the brief after it was typed—

THE COURT: I would assume that as a party to the litgiation you received copies of the—

MR. LEVINSON: Only after they were all—only after they were typed.

THE COURT: Well, I mean, well, that's what I am talking about. I am talking about the briefs that were furnished by the parties filing the action.

MR. LEVINSON: The plaintiff's briefs?

THE COURT: Yes.

MR. LEVINSON: Yes, I received copies of the plaintiff's briefs.

[25] THE COURT: That's what I am asking about.

MR. LEVINSON: But that is only relating to the motion to dismiss the complaint and the—

THE COURT: Well, let me say this, and I am aware, of course, of the fact that under ordinary circumstances

where an injunction is going to be issued there is usually—usually there are some factual questions involved that require some kind of a hearing. I interpreted what was filed in this case as, actually, a motion, in effect, for what would amount to a, in effect, a summary judgment based on the admitted facts, based on the working of the statute as such and I decided no questions of fact except the fact that five percent means so many voters and I've decided—and I know of the existence of the statutes and the extent of the decision. You are not bound by any factual, any factual determination that I have made.

MR. LEVINSON: You have made no factual determination, your Honor.

THE COURT: No, no. And so—

MR. LEVINSON: But I maintain—I am maintaining that there has to be a factual determination—

THE COURT: Well, tell me what—I mean, I am basing this entirely on what I have—on the admitted, I mean, on what the admitted effect of the present statute is in [27] argued in the Jackson vs. Ogilvie case.

We were challenging—

THE COURT: I guess somebody in a brief—

MR. COLEMAN: One sentence.

THE COURT: Found one sentence in a brief and it got lost.

MR. LEVINSON: Judge, I haven't joined in this motion but I—

THE COURT: Was that your brief?

MR. LEVINSON: Yes, Judge. I felt that it was raised in the case—

THE COURT: It was raised but then no one discussed it.



MR. COLMAN: Never.

MR. LEVINSON: It was not—it was not discussed in the opinion but the state, who actually argued for the unconstitutionality of the statute, although they were a defendant in the case, did raise that issue and I did make a point.

THE COURT: You say that they argued—for what?

MR. LEVIN: They argued in that, in Jackson vs. Ogilvie, they filed their brief and it is attached as an appendix, arguing that the statute was unconstitutional rather—even though they are a nominal defendant, and they did argue in their brief that distinction and I tried [28] to—

THE COURT: That is was unconstitutional on what basis?

MR. LEVIN: On the ground, that there was—that it would require almost 60,000 for an independent in Chicago and only 25,000 to form a new political party or run independent state-wide, and that is in my reply, my reply brief, and I did try to make the point at the time, which your Honor in his opinion, you know, for reasons stated, didn't adopt. But that was there. That was raised.

MR. COLMAN: Well, it is a—

THE COURT: Well, you go ahead and finish your statement.

MR. COLMAN: It is axiomatic, as your Honor knows, that just because a statute has been upheld against one constitutional challenge does not mean that it is immune from new constitutional challenges.

And as your Honor points out in the opinion, neither the majority nor Judge Pell in his dissent in Jackson vs. Ogilvie discussed the constitutional challenge that we raised in this case.

I'd like to add just two other points. First of all, the defendants in this matter were on notice of our motion for preliminary injunction. We filed it almost four weeks ago. So that they can't say that they [29] didn't have notice that we wanted judgement on the claims that we were making.

MR. LEVINSON: A preliminary injunction.

THE COURT: Yes. All right, Well, go ahead.

MR. COLMAN: Secondly—well, as far as that is concerned, your Honor is correct, there is no question of fact, it is a pure interpretation of the statute against an equal protection argument.

Finally, Mr. Levin is here—

MR. LEVINSON: Mr. Levinson?

MR. COLMAN: Mr. Levin—

MR. LEVINSON: Oh, I am sorry.

MR. COLMAN: Is here representing three defendants that your Honor has entered an injunction against. He does not oppose that injunction at the present time. We have worked out an agreement in this matter.

Mr. Levinson does not represent the people that you have enjoined and I don't think that he has standing to even come before you today and argue that the injunction against Mr. Levin's clients is improper.

THE COURT: Well, he certainly has standing to the effect that, I mean, to the extent that I have held a state court, that is, a state statue, unconstitutional where he—the legislature is going to have to take some action to cure this, in the future, at least, and, I mean, [30] I—

MR. LEVIN: Your Honor?

THE COURT: Yes?

MR. LEVIN: I just wanted to clarify one thing, your Honor. For the record, Judge, I did not join in the motion.



I didn't want the record to reflect to say that I do not oppose, I mean, that I oppose the motion. I have never said that I have not joined in it today. I just wanted to have the record show that.

THE COURT: Well, the record will show that.

MR. LEVIN: All right. Fine.

THE COURT: Well, tell me what kind of a hearing you envisage. I don't want to—I certainly don't want to deprive you of anything that you think that you are entitled to.

MR. LEVINSON: We think, your Honor, and we only suggest—and, again, it is a—

THE COURT: It probably isn't going to affect this particular election but—

MR. LEVINSON: In all due respect to this Court, and I again appreciate the consideration of the Court for allowing me to address the Court on this matter, but if in fact the plaintiffs are attempting to avoid the constraints of the United States Supreme Court which has specifically held by affirming the judgment of the [31] Seventh Circuit, that our statute does not violate the equal protection of the laws clause of the Fourteenth Amendment, that they have to present a case before your court and we have to have an opportunity to present our defense that it does not on its facts distinguish it from the holding set forth in Jackson vs. Ogilvie.

THE COURT: I have held, in effect, that there is a difference.

MR. LEVINSON: But that is a factual determination.

THE COURT: That this is a special election, that by reason of—I have pointed it out. If you have read—you have read this, I am sure.

MR. LEVINSON: Yes, yes, I have, your Honor.

THE COURT: And I have pointed out what the differences are as applied to a special election and a general election.

MR. LEVINSON: But I think that we are entitled, your Honor, for them to prove those facts. I don't think that one can assume—

THE COURT: To prove what, for example?

MR. LEVINSON: Well, the mere fact that we have a special election does not—

THE COURT: Not prove it, they can argue the point; that's what they have done, they have argued the point and they have convinced me that under the circumstances that have been alleged here that the statute certainly [32] can't properly apply. I mean, I—

MR. LEVIN: Judge, may I just—

THE COURT: Can you suggest to me a rational basis, as long as we are talking the law?

MR. LEVINSON: Yes, I can, sir.

THE COURT: Well, all right. Go ahead.

MR. LEVINSON: Since there are special elections held throughout the State of Illinois—

THE COURT: Well, all right.

MR. LEVINSON: And in your instance if you—

THE COURT: But in the City of Chicago the application of it requires how many—would require how many signatures?

MR. LEVINSON: Approximately 32,000.

THE COURT: All right. 32,000. 32,000 as opposed to 25,000 if you are going to run state-wide in the whole State of Illinois, and you think—and you think that it would



require more signatures rationally in the City of Chicago for a single election here than you can for the state, for the whole State of Illinois?

MR. LEVINSON: That's what the Supreme Court has held. The United States Supreme Court has upheld the constitutionality of the five percent signature requirement in the city of election. The City of Chicago election.

MR. COLMAN: Not against the challenge that your [33] Honor has just brought to him. He has not—

THE COURT: I will give the Supreme Court a second chance at it. And so—

MR. LEVIN: Judge, may I ask one question, and it is a little off but—

THE COURT: Go ahead.

MR. LEVIN: There has been some confusion on this point in your opinion, which was very explicit, but on this one point, because we have been talking about special vs. general elections, is it your opinion that this permanent injunction is for this election or was that to be a permanent injunction for all elections?

THE COURT: Well, I think that it is a permanent injunction as applied to all elections insofar as—

MR. LEVIN: I mean, as to the future?

THE COURT: That is right.

MR. LEVIN: Future?

THE COURT: That is right.

MR. LEVIN: All right. Okay.

THE COURT: So, I don't know, if you need to file a response—I can find no basis at this time, but if you want to make—I am not sure what kind of a hearing we would hold, no more than what we are doing here today. I mean, I—

MR. LEVINSON: They would have to hold, your Honor, [34] the—how the filing date—apparently there is a stipulation on your desk extending the filing date. That filing date has been upheld by the Supreme Court of the United States. They have to set forth a factual basis why that date should be extended. They have no authority to extend the provisions of the state law.

THE COURT: Well, I have got to do something in order to take care of this special election and if you want to test the validity of this as applied to the state generally, of course, you are entitled to do so.

MR. LEVINSON: But your order—

THE COURT: I don't think that I am going to vacate the—not without some further showing from you that I reached the wrong conclusion but if you want to argue it further or present something more to me than you presented, I am not going to foreclose you from doing that.

MR. LEVINSON: Well, I think that we have—I think that it is incumbent upon the plaintiffs to present their case and then, because they are—

THE COURT: Do you have any evidence to present that you would present or which to present?

MR. COLMAN: There are no facts, your Honor. The situation is very simple. We are dealing with similarly situated individuals. If someone wants to run for mayor [35] of the City of Chicago—

THE COURT: Well, I understand that.

MR. COLMAN: Well, it is just a question of, is there a rational justification—the question that you put to Mr. Levinson before and he ignored your question, he didn't give you any rational justification.



He tried to argue that the United States Supreme Court had affirmed the constitutionality of the statute faced with that challenge, but they didn't and it wasn't a Seventh Circuit opinion which Mr. Levinson represented it to be, to begin with.

THE COURT: No, it was a three-judge court. The only member of the Seventh Circuit was Judge Pell who strongly dissented.

MR. COLMAN: That is right.

MR. LEVINSON: I would suggest then that we be given an opportunity to call a witness and present a record that the special election in the City of Chicago is no different than any other election in terms of the time requirement and the notice requirements and does violence to the other provisions of the election code and I'd like to present a record before the entry of a permanent injunction.

THE COURT: Well, the only thing I said about it was the difficulty is that in a general election everybody [36] knows in advance when you have got to get going; in this election no one knows until the moment comes and a death takes place or something like that and all at once your time starts and you have got to get moving.

In a general election I know now that I can start next week collecting signatures if I want to because I know—I know the filing dates and everything else but in a special election the whole machinery is changed for that purpose.

MR. LEVINSON: Well, we would like to present evidence that a special election that has to be called within six months is within at least three cases decided by the Supreme Court, is sufficient time. The mayor died in December and that's sufficient time and we would like to make a record that the special election in this instance gives ample

time to the plaintiffs to file their petitions and it creates—they are trying to argue that it does not. We would like to present a defense, factually through testimony, that a special election is no different than a regular election, that there is enough time to secure signature requirements.

MR. COLMAN: Your Honor, that would have absolutely no bearing on the equal protection judgment you have already entered, which has to do with the law as it is on its face.

[37] Mr. Levin and I have agreed, because of the constraints of the special election, to entry of this order by your Honor today.

One of our clients is here in court and one of the reasons why we are willing to forego any hearing on reduced numbers as set forth in your opinion is because they want certainty, they want to go out and try to collect signatures, they want to exercise their First Amendment rights.

MR. LEVINSON: Well, we would like the opportunity to present a record whereby a special election is no different than any other election because six months is required for the calling of an election. And we have not had the opportunity to do so.

THE COURT: Well, what about the—I mean, the filing date, the new filing date is by stipulation, is that right?

MR. COLMAN: It is by agreement, yes.

THE COURT: Or by agreement.

MR. COLMAN: Yes, your Honor.

MR. LEVIN: Judge, may I say something?

THE COURT: Yes.

MR. LEVIN: I am kind of in the middle of things.

I basically—I didn't join in the motion but I basically have some conception, I have conceptual [38] agreement



with the state, the State Board on some of these things, however, Mr Colman and Mr. Luking are perfectly right, and you were there this morning at pretrial, after the aftermath, that we had some very intensive negotiations and I in good faith, right or wrong—and Mr. Levinson doesn't feel that I have the authority—entered into certain things for this special election.

Our people, Judge, at the—they have a policy problem in the State Board and I think that they are right conceptually but we have the same sort of problem that they have as one of certainty; in other words, we have to know that—we have to get a whole—

THE COURT: Well, that's my whole problem.

MR. LEVIN: We have an election calendar, we have to—we are going to have to—we have done it once or twice already in this case and we have to get ready—

THE COURT: Well, so far as this special election is concerned my mind is made up.

MR. LEVIN: Yes.

THE COURT: That it is going to operate this way and I will take under advisement your motion to vacate and perhaps what you had better do is to make an offer of proof and let me find out what you want to do and then I can visualize what kind of a hearing we are going to have.

MR. LEVINSON: Well, when could I have a date on that, [39] your Honor? I'd like to get a witness on this because—

THE COURT: All right. Well—

MR. LEVINSON: Because the 64-day prior to the special election is set forth in the—

THE COURT: Well, what do you expect me to do in connection with this election?

MR. LEVINSON: Well, I would like to—

THE COURT: Adhere, adhere to the statute? Is this what you mean?

MR. LEVINSON: Well, if you don't adhere I'd like to have evidence in the record as to why the Court should have adhered to the 64 day requirement, that no independent or new political party petition should be accepted after 64 days prior to a general election.

MR. COLMAN: This is a special election.

MR. LEVINSON: You can call it anything you want. It is an election and it was scheduled—

MR. LEVIN: Judge, I agree with Mr. Levinson and I don't—it is a conceptual thing but in terms of the reasons you gave I am not necessarily in agreement with your opinion—I agree with Mr. Levinson, however, and to resolve the thing for a certainty and to be fair—I tried to be fair to both sides—and although it is putting us in a risk timewise, I made that commitment, [40] and they made certain—Mr. Colman had his clients give up certain things, certain commitments, and I—I would rather, and this is going against Mr. Levinson who is, in a certain sense, friendly, and I really have a hard time doing that, but my point is that I really think, Judge, that for this special election, right or wrong, we have made up our minds, and I have talked to my client and we just feel—

THE COURT: Well, I am going to—

MR. LEVIN: We should have the order and both sides should know what we are doing.

THE COURT: Well, I am going to adhere to it so far as this special election is concerned and—

MR. LEVIN: I might even join in with him on some of them, you know, the stare decisis effect, the Jackson case as to the general—



THE COURT: Well, the motion to vacate—yes. And the motion to vacate will be under advisement and, in other words, the permanent effect of my injunction, that question will stay unresolved until some such time that we can set it down, but there is no urgency. We will take care of that before the next time any problems like this may come up under the general election. So, you have my—

MR. LEVIN: Right. Judge, could I, since I have [41] not joined, may it be left open that sometime in the future I may have the opportunity, if I choose to, to join on that question?

THE COURT: I am not going to preclude you.

MR. LEVIN: All right. Fine.

THE COURT: Yes. I am not going to preclude you because of your position here.

MR. LEVIN: Fine. Thank you.

THE COURT: You are not going to be estopped.

MR. LEVIN: Right. I may do that.

THE COURT: All right.

MR. COLMAN: May I ask, your Honor, that in the event that you decide that there is any merit to this motion to vacate—

THE COURT: I will ask you to file a responsive brief.

MR. COLMAN: Please, because I personally think, with all due respect to Mr. Levinson, that their contentions raised in there—that the contentions raised in there as to the Jackson vs. Ogilvie point are frivolous.

THE COURT: Well, I will certainly let you—he has field a brief, do you want to file a responsive brief now?

MR. COLMAN: I think that your Honor's opinion [42] states—

THE COURT: Well, I thought that it did, too.

MR. COLMAN: Just what I would say.

THE COURT: All right. Well, I will let him present what he suggests as an offer of proof and if I think that we can derive some benefit from that I will set down for a hearing.

MR. COLMAN: So his offer will be in writing?

THE COURT: That is right. And copies to you.

MR. COLMAN: Fine.

MR. LEVIN: In the meantime we will enter the order?

THE COURT: I will enter the order.

MR. LEVIN: Which will finalize the special election?

THE COURT: That is right. All right.

MR. LEVIN: Thank you, Judge.

MR. COLMAN: Thank you, your Honor.

THE COURT: Yes.



IN THE [43]

**UNITED STATES DISTRICT COURT**

FOR THE

**NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

| | |
|---|---|
| SOCIALIST WORKERS PARTY, et al., *Plaintiffs,* vs. CHICAGO BOARD OF ELECTION COMMISSIONERS, et al., *Defendants.* | No 77 C 255 and No. 77 C 326 |
| GERALD ROSE, et al., *Plaintiffs,* vs. JOHN HANLY, et al., *Defendants.* | — |

**CERTIFICATE**

I DO HEREBY CERTIFY that the above-entitled proceedings were had before the HON. BERNARD M. DECKER, one of the Judges of said Court, in his courtroom, at the United States Court House, Chicago, Illinois, on February 11, 1977 and May 17, 1977, and that I as Official Court Reporter did stenographically write and transcribe the foregoing proceedings consisting of pages 1 through 42, inclusive, and that said transcription is a full and complete, true and accurate transcription of my official shorthand notes so made as aforesaid.

/s/ ROBERT J. BETZ
*Official Court Reporter*
*United States District Court.*